

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





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75-7284

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

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LAWRENCE R. BARNETT, C. LEONARD GORDON and  
ALFRED L. HOLLENDER,

*Plaintiffs-Appellants,*  
*against*

DON KIRSHNER, IRVING COHEN, HERBERT T. MOELIS  
and KIRSHNER ENTERTAINMENT CORPORATION,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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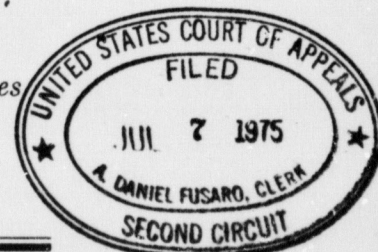
JOINT APPENDIX

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# INDEX TO APPENDIX

	Page
Relevant Docket Entries . . . . .	1a
Amended Complaint . . . . .	2a
Answer. . . . .	8a
Memorandum and Order No. 42285. . . . .	16a
Opinion No. 42217 . . . . .	18a
Final Judgment. . . . .	31a
Excerpts From Joint Pre-Trial Order	
Undisputed Facts . . . . .	32a
Parts of Stenographer's Minutes Designated by Plaintiffs-Appellants	
Opening statement of Barry Fredericks, Esq., of counsel to defendants. . . . .	40a
Testimony of Irving Cohen. . . . .	42a
Parts of Stenographer's Minutes Designated by Defendants-Appellees	
Testimony of Alfred L. Hollender . . . . .	51a
Testimony of Lawrence R. Barnett . . . . .	76a
Testimony of C. Leonard Gordon . . . . .	83a
Deposition testimony of Herbert Moelis read at trial. . . . .	97a
Testimony of Irving Cohen. . . . .	107a
Exhibits	
Excerpts from Stockholders Agreement dated June 26, 1967 . . . . .	114a
Letter from Herbert Moelis to Cohen & Grossberg, attention Irving Cohen, Esq., dated December 9, 1968. . . . .	115a
Memorandum from David Grossberg to Herbert Moelis dated December 12, 1968. . . . .	117a

Form letter of David Grossberg dated December 23, 1968 bearing separate notation of names and addresses of stockholders to whom letters were mailed . . . . .	118a
Letter from C. Leonard Gordon to Kirshner Entertainment Corporation dated December 30, 1968. . . . .	119a
Undated letter from C. Leonard Gordon to Herbert Moelis . . . . .	120a
Receipt dated December 30, 1968 signed by C. Leonard Gordon . . . . .	121a
Letter from Herbert Moelis to Kirshner Entertainment Corporation et al., dated December , 1968 bearing the signature of C. Leonard Gordon . . . . .	122a
Letter from Lawrence R. Barnett to Messrs. Cohen and Kirshner dated December 30, 1968 . . . . .	124a
Receipt dated December 30, 1968 signed by Lawrence R. Barnett. . . . .	125a
Letter from Irving Cohen to Kirshner Entertainment Corporation, et al., dated December , 1968 bearing the signature of Lawrence R. Barnett . . . .	126a
Letter from Don Kirshner to Kirshner Entertainment Corporation, et al., dated December , 1968 bearing the signature of James J. Rochlis. . . . .	128a
Letter from Alfred L. Hollender to Kirshner Entertainment dated January 10, 1969 . . . . .	130a
Letter from Irving Cohen to Alfred L. Hollender dated January 27, 1969 . . . . .	131a
Letter from Alfred L. Hollender to Irving Cohen dated January 29, 1969 signed by Alfred L. Hollender and countersigned by Benjamin Zinkin on behalf of Irving Cohen. . . . .	132a
Receipt dated January 29, 1969 signed by Alfred L. Hollender. . . . .	133a
Letter from Irving Cohen to Kirshner Entertainment Corporation, et al., dated January 29, 1969 signed by Irving Cohen and Alfred L. Hollender . . .	134a
Form letter of David Grossberg dated February 19, 1969 bearing separate notation of names and addresses of stockholders to whom letters were mailed . . . . .	136a



Letter from C. Leonard Gordon to Irving Cohen dated March 20, 1969 . . . . .	137a
Letter from Irving Cohen to C. Leonard Gordon dated March 26, 1969. . . . .	138a
Seven page document captioned "MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF KIRSHNER ENTERTAINMENT CORPORATION" dated April 4, 1969 and signed Irving Cohen, Secretary. . . . .	139a
Excerpts from Prospectus of Kirshner Entertainment Corporation. . . . .	146a



Relevant Docket Entries

May 8 - 70 Filed complaint issued summons.

Nov. 1 - 74 Filed Answer to complaint by deft's.

Dec. 18 - 74 Before Knapp, J. Non Jury trial begun.

Dec. 19 - 74 Trial continued and concluded.  
Decision Reserved.

04-09-75 Filed OPINION #42217: Ordered that judgment be entered on behalf of deft's & that pltff's complaint be dismissed in its entirety. The foregoing constitutes the court's findings of fact & conclusions of law as required by rule 52. So ordered. Knapp, J. m/n.

04-14-75 Filed Ordered that deft's have judgment against pltff's dismissing the complaint in its entirety. Judgment Ent. Clerk, m/n Ent. 4/15/75.

04-22-75 Filed Memorandum & order #42285: The pltff's have called attention that certain oral decisions made during the pre-trial and post-trial stages were not reflected in the docket. It should be noted that on 12-12-74, the court granted pltff's application to amend the complaint & denied deft's motion to dismiss and or for summary judgment & on 2-21-75, during post-trial argument the court granted pltff's oral application to conform the pleading to the proof. So ordered. Knapp, J. m/n.

5-9-75 Filed Joint Pre-Trial Order. Knapp, J.



3. Plaintiff Gordon, one of the nine organizers of Corporation purchased in June and September, 1967 6000 shares of common stock of Corporation, and then and thereafter

## Amended Complaint.

an aggregate of \$24,000 principal amount of Corporation's notes.

4. Plaintiff Gordon was a director of Corporation until on or after December, 1968.

5. Plaintiff Hollender in 1967 and 1968 arranged a business association between Corporation and one Harry Saltzman, producer of the James Bond and other motion pictures; in consideration of services then and thereafter rendered defendant Kirshner offered plaintiff Hollender the privilege of purchasing securities of Corporation; plaintiff Hollender purchased in March, 1968 8000 shares of common stock of Corporation, and then and thereafter an aggregate of \$32,000 principal amount of Corporation's notes.

6. Defendant Kirshner Entertainment Corporation is a corporation duly organized under the laws of the State of New York; it was organized in June, 1967 by plaintiffs Barnett and Gordon, defendants Kirshner and Moelis, and five other individuals (among whom there was a close and confidential relationship) to engage in various activities in the field of entertainment, principally music publishing.

7. At all the times hereinafter mentioned defendant Kirshner was and is chairman of the board, president, chief executive officer, director and controlling stockholder of Corporation.



## Amended Complaint.

8. At all the times hereinafter mentioned defendant Cohen was and is a lawyer, secretary of Corporation, a member of the law firm of Cohen & Grossberg, attorneys for Corporation, and an officer, director and counsel for the companies involved in the Alan Jay Lerner transactions herein-after referred to.

9. Defendant Cohen was retained as counsel for Corporation at the suggestion and on the recommendation of plaintiff Gordon.

10. At all the times hereinafter mentioned defendant Moelis was and is a lawyer and first vice president, treasurer and director of Corporation.

11. This Court has jurisdiction of this action by virtue of Section 10 of the Securities and Exchange Act of 1934 (15 U.S.C. §10) and Rule 10b-5 of the general rules and regulations of the Securities and Exchange Commission.

12. Plaintiffs and defendants were parties to agreements executed on or about June 26, 1967 which provided, among other things: (a) an employment agreement providing for the payment by Corporation to defendant Kirshner of a salary at the rate of \$105,000. per annum, and payable weekly; (b) an option to defendant Kirshner to purchase shares from other stockholders upon terms provided therein; and (c) restricting the sale of stock of any of the stockholders until such stock shall have been first offered to the Corporation

## Amended Complaint.

or to the other stockholders pro rata.

13. Upon information and belief, prior to March, 1969 defendants conspired to purchase plaintiffs' holdings of stock and notes of Corporation at prices below their real value as follows: defendants caused Corporation to incur large and unauthorized expenses for their personal benefit which depressed the operating results of Corporation so that it appeared to be a substantial loss company; defendants, secretly and without notice to or knowledge of plaintiffs, arranged the sale to Corporation of valuable Alan Jay Lerner properties including, among others, the musical rights to songs from My Fair Lady, Paint Your Wagon, Brigadoon, Camelot, On A Clear Day You Can See Forever, and Gigi; while withholding material information about Corporation and misrepresenting it as a substantial loss company, defendants solicited and urged plaintiffs and other stockholders of Corporation to sell to them their holdings of stocks and notes of Corporation; as a result Plaintiffs were induced to sell their stock and holdings in Corporation to defendants at their original cost. The agreements by plaintiffs to sell their securities were subject to the execution and return of written consents by all the stockholders of Kirshner Entertainment Corporation.

14. Plaintiffs first learned of the acquisition by Corporation of the Alan Jay Lerner properties in March, 1969 from announcements in the newspapers and promptly complained to the defendants.



Amended Complaint.

15. Upon information and belief, defendant Cohen received special benefits from Corporation for arranging the sale of the Alan Jay Lerner properties to Corporation.

16. After the completion of the transaction involving the acquisition of the Alan Jay Lerner properties, the stock of Corporation was split five-for-one after which Corporation made a public offering at a price which attached a value to the common stock many times greater than the price which plaintiffs were induced to accept from defendants.

17. The acts of defendants were intended to and did deceive the plaintiffs herein.

18. The plaintiffs hereby tender to the defendants the moneys which they received as the purchase price for the stock and notes of defendant Corporation.

AS A SECOND CAUSE OF ACTION

19. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 18 with the same force and effect as if they were set forth at length.

20. The acts of defendants were in flagrant disregard of the confidential relationship existing between them and in breach of their fiduciary obligations to plaintiffs.

## Amended Complaint.

WHEREFORE, plaintiffs demand judgment as follows:

(a) that the transactions involving the purchase of stock and notes of the defendant Corporation be rescinded and that the individual defendants be directed to deliver the said stock and notes to the plaintiffs;

(b) damages against the defendants Kirshner, Cohen and Moelis for the difference between the price paid by them to the plaintiffs for their stock and notes in the defendant Corporation and the real value of the said stock and notes;

(c) that defendant Corporation be restrained and enjoined from transferring or permitting the transfer of its stock and assets except in the regular or ordinary course of business, or from taking or permitting any action prejudicial and injurious to the rights of the plaintiffs herein; together with the costs and disbursements of this action.

May 7, 1970.

David Brady  
\_\_\_\_\_  
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New York, N.Y. 10005  
REctor 2-5800



Answer.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
:
   
LAWRENCE R. BARNETT, C. LEONARD GORDON, :
   
and ALFRED L. HOLLENDER, :
   
:
   
Plaintiffs, :
   
: 70 CIV. 1875
   
-against- :
   
: ANSWER
   
DON KIRSHNER, IRVING COHEN, HERBERT T. :
   
MOELIS, and KIRSHNER ENTERTAINMENT :
   
CORPORATION, :
   
:
   
Defendants. :
   
-----

Defendants, DON KIRSHNER ("Kirshner"), IRVING COHEN ("Cohen"), HERBERT MOELIS ("Moelis") and KIRSHNER ENTERTAINMENT CORPORATION ("Corporation"), answering the Complaint herein, by COHEN & GROSSBERG, their attorneys:

1. Deny each and every allegation contained in paragraph "1" of the Complaint, except admit that Corporation was originally known as KIRSHNER PRODUCTIONS, INC. and that LAWRENCE R. BARNETT ("Barnett") purchased Eight Thousand (8,000) shares of common stock of Corporation in June, 1967, and then and thereafter an aggregate of \$32,000. principal amount of corporate notes.

2. Deny each and every allegation contained in paragraph "2" of the Complaint, except admit that Barnett was a director of Corporation from January 5, 1968 to December 30, 1968.

Answer.

3. Deny each and every allegation contained in paragraph "3" of the Complaint except admit that C. LEONARD GORDON ("Gordon") purchased four thousand (4,000) shares of common stock of the Corporation in June 1967, and an additional two thousand (2,000) shares in September 1967, and was the owner of an aggregate of \$24,000 principal amount of corporate notes.

4. Deny each and every allegation contained in paragraph "4" of the Complaint, except admit that Gordon, was a director of Corporation from January 5, 1968 to December 30, 1968.

5. Defendants, Kirshner, Moelis and Corporation deny each and every allegation contained in paragraph "5" of the Complaint, except admit that ALFRED L. HOLLENDER ("Hollender") introduced the Corporation to HARRY SALTZMAN, that the Corporation and HARRY SALTZMAN have co-produced a motion picture, and that Hollender purchased from another stockholder of the Corporation, not a party hereto, eight thousand (8,000) shares of common stock of Corporation and \$32,000. principal amount of corporate notes. Defendant Cohen denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "5" of the Complaint, except that the Corporation and HARRY SALTZMAN have co-produced a motion picture and that Hollender was a stockholder and noteholder of the Corporation for a period of time.



## Answer.

6. Deny each and every allegation contained in paragraph "6" of the Complaint, except admit that Corporation was organized under the laws of the State of New York on June 12, 1967 to engage in various activities in the field of entertainment.

7. Deny each and every allegation contained in paragraph "7" of the Complaint, except admit that KIRSHNER has been the President, Chief Executive Officer and a Director of Corporation from June 29, 1967 to the present; that KIRSHNER has been Chairman of the Board from May 27, 1969 to the present; that KIRSHNER is now the owner of approximately forty six (46%) percent of the outstanding shares of common stock of Corporation; and that prior to this date, KIRSHNER'S percentage ownership of common stock of Corporation has varied but was always substantial.

8. Deny each and every allegation contained in paragraph "8" of the Complaint except admit that Cohen at all times mentioned in the Complaint was and is a lawyer, a member of the law firm of COHEN & GROSSBERG; that at all times mentioned in the Complaint, this firm was counsel for ALAN JAY LERNER and certain corporations and individuals associated with him owning an interest in proceeds from certain works written by him and Cohen was and is an officer of some of these associated corporations and director of some of them and since April 4, 1969, Cohen has been Secretary of Corporation and during 1968 COHEN & GROSSBERG became counsel to Corporation.

Answer.

9. Deny each and every allegation contained in paragraphs "9", "11", "15", "17" and "20" of the Complaint.

10. Deny each and every allegation contained in paragraph "12" of the Complaint except admit that Kirshner, Moelis and Corporation and Barnett and Gordon were parties to the agreements executed on or about June 26, 1967 and that Cohen and Hollender became bound thereby at the time of the purchase of their stock, and that the said agreements speak for themselves and have been amended several times.

11. Deny each and every allegation contained in paragraph "13" of the Complaint except admit that Barnett and Gordon sold their stock and notes in or about December of 1968 and Hollender sold his in January 1969.

12. Deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "14".

13. Deny each and every allegation contained in paragraph "16" of the Complaint, except admit that the stock of the Corporation was split five-for-one in April 1969 and that the Corporation made a public offering of its stock at Ten (\$10.00) Dollars per share on March 12, 1970.

14. Answering paragraph "19", Defendants repeat and reallege their answers to paragraphs "1" through "18" with the same force and effect as if set forth once again herein at length.



Answer.

FOR A FIRST AND SEPARATE DEFENSE  
DEFENDANTS ALLEGE:

15. That the Complaint does not state a cause of action.

FOR A SECOND AND SEPARATE  
DEFENSE DEFENDANTS ALLEGE:

16. That this court does not have jurisdiction over this action by reason of the fact that the sale of securities by Plaintiffs to Messrs. Kirshner, Moelis and Cohen were not by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange and Section 10 of the Securities and Exchange Act of 1934 (15 USC Sec. 10) and Rule 10 b 5 of the General Rules and Regulations of the Securities and Exchange Commission are not applicable to the transactions complained of.

FOR A THIRD AND SEPARATE  
DEFENSE DEFENDANTS ALLEGE:

17. That the following are officers and directors of Chris Craft Industries, Inc., as indicated: Barnett is Vice President and Director; Gordon is a Vice President and Director; HERBERT J. SIEGEL is Chairman, President and Director; JAMES J. ROCHLIS is Executive Vice President of the Boat Division; DAVID F. LINOWES is a Director. Gordon, HERBERT J. SIEGEL, JAMES J. ROCHLIS, DAVID F. LINOWES and ROCHARD ORNSTEEN, EDWIN M. SABOL, brothers-in-law of HERBERT J. SIEGEL and ANN L. SIEGEL, wife of HERBERT J. SIEGEL, are

Answer.

all stockholders of Corporation and participated in the public sale of common stock of Corporation and sold approximately 11,000 shares to the public in connection therewith.

18. Barnett, Gordon, Hollender, HERBERT J. SIEGEL, JAMES J. ROCHLIS and DAVID F. LINOWES have a close and confidential relationship, one to the other.

19. Gordon has consented to Corporation's public sale of common stock and has accepted a proportionate share of profits arising therefrom.

20. With full knowledge and notice of all acts of the Defendants set forth in the Complaint, for over a year Plaintiffs have stood by while Corporation went through all the necessary steps of a public offering, to the benefit of themselves or their business associates with whom they have a close relationship. Plaintiffs and the business associates and relatives thereof sold approximately 11,000 shares of common stock in the said public offering.

21. On information and belief, Plaintiffs have purchased large amounts of securities of CHRIS CRAFT INDUSTRIES, INC. and have borrowed large amounts in connection therewith. The proceeds of the sale of Corporation's stock and notes owned by Plaintiffs were used in connection with Plaintiff's plan of purchase, together with their close and confidential associates above-named, of large amounts of securities of CHRIS CRAFT INDUSTRIES, INC.



Answer.

22. Messrs. Barnett, Gordon and Hollender each approached and requested Messrs. Kirshner or Moelis or both of them to find a purchaser of their interests in Corporation and instituted the procedures whereby their securities were sold.

23. By reason of the foregoing, Plaintiffs are estopped from complaining of the matters alleged in the Complaint.

FOR A FOURTH AND SEPARATE  
DEFENSE DEFENDANTS ALLEGE:

24. With full knowledge and notice of all facts and acts of the Defendants set forth in Plaintiff's Complaint herein, Plaintiffs refrained from commencing this action for a period of more than a year and have thereby been guilty of such laches as should, in equity, bar the Plaintiffs from this action; during that period, Plaintiffs have remained silent, have made no objections to the actions now complained of by them in their Complaint, and have accepted benefits personally or to their close business associates.

WHEREFORE, Defendants, DON KIRSHNER, HERBERT MOELIS, and KIRSHNER ENTERTAINMENT CORPORATION and IRVING COHEN demand judgment dismissing the Complaint herein, together

15a

Answer.

with the costs and disbursements of this action.

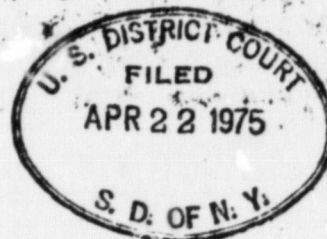
Dated: New York, New York  
June 2, 1970

COHEN & GROSSBERG  
Attorneys for Defendants  
505 Park Avenue  
New York, N.Y. 10022

By /s/ David Grossberg  
David Grossberg



Memorandum and Order No. 42285, Knapp, J.

*Copy*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LAWRENCE R. BARNETT, C. LEONARD  
GORDON and ALFRED L. HOLLENDER,

Plaintiffs,

- against -

DON KIRSHNER, IRVING COHEN,  
HERBERT T. MOELIS and KIRSHNER  
ENTERTAINMENT CORPORATION,

Defendants.

MEMORANDUM AND ORDER

70 Civ. 1875

# 42285

KNAPP, P.J.

The plaintiffs in the above-entitled action have called attention to the fact that certain oral decisions made by the Court during the pre-trial and post-trial stages of the litigation were not reflected in the Civil Docket of this case in the Clerk's Office.

In order that the record may be made complete, it should therefore be noted on the docket sheet that on December 12, 1974, the Court granted plaintiffs' application to amend the complaint and denied defendants' motion to dismiss and/or for summary judgment. Furthermore, it should be noted that on

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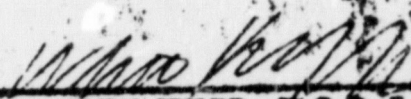
Memorandum and Order, No. 42285

February 21, 1975, during post-trial argument, the Court granted plaintiffs' oral application to conform the pleadings to the proof.

SO ORDERED.

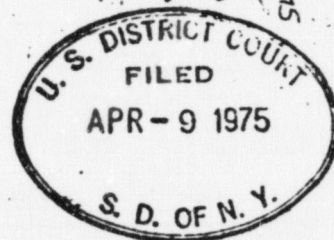
Dated: New York, New York

April 21, 1975.

  
WILLIAM KNAPF, U.S.D.J.



Opinion No. 42217, Knapp, J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x

LAWRENCE R. BARNETT, C. LEONARD  
GORDON and ALFRED L. HOLLENDER,

Plaintiffs,

- against -

DON KIRSHNER, IRVING COHEN, HERBERT T.  
MOELIS and KIRSHNER ENTERTAINMENT  
CORPORATION,

Defendants.

----- -x

OPINION

70 Civ. 1875

#42217

A P P E A R A N C E S :

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Of Counsel

## Opinion.

KNAPP, D.J.

This case was tried without a jury in December, 1974. Plaintiffs Barnett, Gordon, and Hollender are all former shareholders of Kirshner Entertainment Corporation (KEC). They maintain that the individually named defendants conspired and arranged for the purchase of plaintiffs' stock in KEC in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and Rule 10b-5 of the General Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. §240.10b-5. Specifically, the plaintiffs claim that the defendant-purchasers did not inform them at the time of the sale that KEC was about to acquire certain lucrative musical properties from the famous lyricist Alan Jay Lerner.

There are two basic questions which govern the outcome of this litigation. The first issue relates to the date when the sale of plaintiffs' stock to the defendants became final. Plaintiffs maintain that the sale was consummated after mid-February, 1969. Defendants claim the sales were consummated on December 30, 1968 and January 29, 1969 respectively. This question is crucial, for it is undisputed that as of February 11, 1969, defendants Kirshner and Moelis had met with Alan Jay Lerner and defendant Cohen to discuss the possibility of KEC acquiring the Lerner properties. If the sales of plaintiffs' stock were consummated after mid-February, as plaintiffs



## Opinion.

contend, it is clear that the defendants' admitted failure to disclose the potential transaction would constitute a violation of the federal securities laws. There can be little doubt that this information would be considered highly relevant to a reasonable investor deciding whether or not to sell his shares in a corporation. See Affiliated Ute Citizens of Utah v. United States (1972) 406 U.S. 128; Securities and Exchange Commission v. Shapiro (2d Cir. 1974) 494 F.2d 1301.

The second question to be decided is only reached if the court finds that the transactions between plaintiffs and defendants were completed prior to February, 1969. In that event, the issue becomes whether the plaintiffs have shown by a preponderance of the evidence that on the dates the transactions were completed, the defendants, and particularly defendant Cohen, had formed a plan to enter into the transactions with Alan Jay Lerner.

On both of the above issues, we find in favor of the defendants.

## I.

Most of the facts in this case are not in dispute. During the period relevant to these proceedings all the plaintiffs were key executives of Chris Craft Industries. Barnett was a vice president of Chris Craft; Gordon, a vice president and general counsel; and Hollender, an Executive vice president.

## Opinion.

Plaintiff Barnett acquired 8,000 shares of KEC in June, 1967 at \$1.00 a share. In addition, he was obligated and did, in fact, loan the company \$32,000. Barnett served as a director of KEC from January 5, 1968 until December 30, 1968. On that date, he delivered his shares to defendants Kirshner and Cohen, and accepted the cash consideration that was agreed upon by the parties.

Plaintiff Gordon acquired his 6,000 shares of KEC in June and September of 1967. He also paid \$1.00 a share and loaned the company \$24,000. Gordon served as a director of KEC from January, 1968 until December 30, 1968, when he tendered his shares to defendant Moelis for an agreed upon consideration.

Plaintiff Hollender purchased his 8,000 shares of KEC in March, 1968, and loaned the company \$32,000. He tendered his shares in KEC on January 29, 1969 to defendant Cohen who was acting as a nominee for a third party.

The alleged material nondisclosure, as noted above, was KEC's acquisition of Alan Jay Lerner's musical properties. As a result of that transaction, the value of plaintiffs' KEC shares would have been far in excess of \$1.00 per share. KEC stock was split five for one in 1969, and in March, 1970, KEC made a public offering of its shares at \$10.00 per share. Prior to the public offering, the shares were privately held, and all the stockholders who are parties to this action were signatories to a restrictive stockholders'



## Opinion.

agreement.

During the period in question, Kirshner was the president and a director of KEC, as well as the owner of more than forty percent of the outstanding shares of common stock. Moelis, an attorney, was vice president, treasurer and director of KEC. Cohen, who plays a critical role in this action, was a lawyer and partner in the firm of Cohen & Grossberg. This firm became counsel to KEC in August, 1968. During the period February 1968 to May 13, 1970 Cohen & Grossberg were also counsel to Alan Jay Lerner and several corporations associated with Mr. Lerner.

## II.

Plaintiffs contend that the transactions involving their sales of KEC stock were not completed until after February 11, 1969. The plaintiffs admit that the tender of the shares took place on December 30, 1968 and January 29, 1969, but argue that the sales were not effective until certain other documents<sup>1/</sup> were executed by non-selling shareholders, who like plaintiffs and defendants, were parties to the KEC Stockholders Agreement dated June 26, 1967. This agreement provided that if any stockholder desired to sell his shares in KEC, the stockholder would have to give the first options to purchase the shares to the corporation, and then to any of the other stockholders. The documents upon which the plaintiffs rely were certain waiver forms sent by the defendant-purchasers to the non-selling shareholders in

## Opinion.

which the latter were asked to waive their option rights under the stockholders' agreement. It is clear from the evidence that such waivers were not fully completed until sometime after the KEC-Lerner negotiations began.

Plaintiffs' reliance on these so-called "consent" forms, however, is misplaced. A careful reading of these instruments as well as other relevant exhibits and testimony demonstrate that these documents were not part of the transaction between the plaintiffs and the defendants, and have no effect whatsoever on the relationship between them.

It is first important to observe that it was the plaintiffs themselves who were in breach of the Stockholders' Agreement. The obligation is clearly on the selling shareholders to offer their stocks to the corporation prior to selling them to anyone else. This the plaintiffs did not, of course, do. As a result of this breach, the corporation and the non-selling shareholders obtained a right to have the sales rescinded pursuant to the contract. This right of rescission on the part of certain third parties, however, does not make the sale of stock between plaintiffs and defendants any less final. It was in order to avoid any possible litigation, that the defendants themselves - the purchasers - solicited the consent forms in question. If these forms had never been obtained, the sales would still have been complete as between plaintiffs and defendants. The existence of certain



## Opinion.

potential rights in third parties does not affect this finality. It is somewhat ironic that in this very lawsuit the plaintiff-sellers are attempting to use their own breach of the Stockholders' Agreement to assert certain rights that none of the other shareholders have asserted.

The uncontradicted evidence at trial clearly indicates that the plaintiffs intended and did in fact sell their stock interests in KEC on the dates the shares were tendered - Gordon and Barnett on December 30, 1968, and Hollender on January 28, 1969. On those dates, the stock was given to the defendants in exchange for cash and an assumption of plaintiffs' liability to KEC. Certain unconditional documents, acknowledging the sale of the securities and discharge of plaintiffs' loan obligations to KEC, were executed at the time. See exhibits 10, 11, 13, 31, 56 and 58. The defendants paid to the plaintiffs all monies required to be paid, and these monies were deposited by the plaintiffs in their personal bank accounts. No reservations whatsoever were expressed by either plaintiffs or defendants.

All the cases cited on this issue by the plaintiffs in their memoranda, see, e.g. Allen v. Biltmore Tissue Corp. (1957) 2 N.Y.2d 534, 161 N.Y.S.2d 418; Pugh v. Fairmont Gold & Silver Mining Co. (1884) 112 U.S. 684; Internatio-Rotterdam, Inc. v. River Brand Rice Mills (2d Cir. 1958) 259 F.2d 137; Detroit Football Co. v. Robinson (E.D. La. 1960) 186 F. Supp. 933, aff'd 283 F.2d 657 (5th

## Opinion.

Cir. 1960) are inapposite. They either deal with sales which were conditioned upon the performance of certain acts or illustrate the general legal principle that a purchaser, who acquires stock in a closely-held corporation, which stock is subject to an option of first refusal held by the corporation or its shareholders, may be subject to an action for rescission maintained by said corporation or its shareholders. In this case, neither of these two situations are applicable.

Accordingly, the court concludes that the sales of plaintiffs' securities were consummated on the dates plaintiffs delivered the securities to the defendants and accepted full payment therefore - December 30, 1968 and January 29, 1969.

## III.

Having concluded that the sale of the KEC stock took place on December 30, 1968 and January 29, 1969, it is next necessary to determine whether the plaintiffs have shown by a preponderance of the evidence that on either of those dates the defendants, and especially defendant Cohen, had formed a plan to enter into the transaction with Alan Jay Lerner.

The evidence which plaintiffs produced on this issue was far from persuasive. For example, they emphasized the dual role that Cohen played as counsel to both KEC and Lerner; the haste in which



## Opinion.

the sales between the plaintiffs and the defendants was arranged: the speed in which KEC and Lerner reached agreement; and finally the fact that Cohen had "lied" about a certain contract to Gordon, after the latter had accused Cohen of fraud in the transactions here at issue.

Upon a review of the entire record, it seems clear that the plaintiffs have not sustained their burden of proof in this action. Countering the inferences plaintiffs ask the court to draw is the testimony of defendant Cohen. Cohen, whom the court found to be a truthful and credible witness, testified that the first time the possibility of a Lerner-KEC transaction crossed his mind was on February 2, 1969, when defendant Moelis suggested over the telephone that Cohen arrange a meeting between Kirshner and Lerner. It should be noted that the parties in their pre-trial order stipulated that the conversation between Cohen and Moelis did take place in the manner in which Cohen testified it did. Even absent this stipulation, however, the court would have accepted Cohen's testimony as truthful.

Other evidence also tends to cast doubt on the plaintiffs' conspiracy theory. First of all the impetus for the sale of plaintiffs' stock in all three instances came from the plaintiffs themselves. Barnett had indicated a desire to sell as early as the summer of 1968. Gordon desired to sell because he believed himself financially overextended. Hollender, on his own initiative, offered to sell his stock to the

## Opinion.

defendants after he admittedly "lost faith in management." In none of these three transactions did the defendants engage in heavy-handed threats or conduct which made the sales in any way coerced.

Finally, the fact that Cohen served as counsel to both Lerner and KEC cannot by itself create an inference of impropriety. Clearly, the dual relationship makes a deal between KEC and Lerner more likely than if such a relationship did not exist. However, all the plaintiffs knew of Cohen's connections. In fact, Gordon testified that one of the reasons he had recommended Cohen as counsel for KEC was that he felt Cohen's association with Lerner would be a valuable asset for KEC.

CONCLUSION

In summary, it seems clear that plaintiffs have not sustained their burden of proof in this action. Accordingly, it is ordered that judgment be entered on behalf of the defendants, and that plaintiffs' complaint be dismissed in its entirety.

The foregoing constitutes the court's findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure.

SO ORDERED.

Dated: New York, New York

April 1, 1975.

  
WHITMAN KNAPP, U.S.D.J.



Opinion.

FOOTNOTE

1/

Thirty-five of these identical "consent" documents were admitted into evidence. They are exhibits 16-24, 36-43, 44-51, 62-63, and 65-72. Exhibit 19 is here reproduced in full as a sample of the documents in question:

## Opinion.

EXHIBIT 19

New York, New York  
December , 1968

To: Kirshner Entertainment Corporation,  
a New York corporation, formerly  
named Kirshner Productions, Inc.  
("Entertainment"), Don Kirshner Music,  
Inc., a New York corporation ("DKMI"),  
KEC Music, Inc., a New York corporation  
("KEC"), and each individual who is a  
party to any of the Agreements (the  
"Agreements") identified in Paragraph  
"1" below:

Dear Sirs:

I hereby confirm my understanding with you as follows:

1. I represent and warrant that I have been provided with  
copies of and I have read the following Agreements:

a. Purchase Agreement dated June 26, 1967 between  
Entertainment and the Purchasers party thereto;

b. (Untitled) Stockholders' Agreement dated June  
26, 1967 between 9 individuals and Entertainment.

c. Amendment dated February 7, 1968 to the Purchase  
Agreement and the Stockholders' Agreement;

d. (Untitled) Agreement dated June 26, 1967 between  
8 individuals.

e. (Untitled) Stockholders' Agreement dated as of  
November 8, 1967 between 10 individuals and DKMI.

f. (Untitled) Agreements dated September 18, 1967  
between 10 individuals and Entertainment relating to  
additional investors.

g. Agreement dated April 23, 1968 between 10 stock-  
holders and KEC.

The parties to these Agreements include some or all of Entertainment,  
DKMI, KEC and the following individuals: Don Kirshner, James J.  
Rochlis, C. Leonard Gordon, Lawrence R. Barnett, David F. Linowes,  
Cy Feuer, Alfred L. Hollender, Richard Ornstein, Herbert J. Siegel  
and Benjamin Sonnenberg.



## Opinion.

2. To induce you to permit me to purchase all of the common stock of Entertainment, DKMI and of KEC owned by C. Leonard Gordon and to arrange to lend to Entertainment the sum of \$24,000 on the same terms and conditions as the said loan by Gordon, I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named therein at the time of their original execution. Effective from such date, each of you releases C. Leonard Gordon from any and all liability under the Agreements.

3. On such effective date, I shall execute and deliver to Entertainment a stockholder's consent to Entertainment's Subchapter S election and similarly with respect to DKMI and KEC.

4. Your consent to the transactions contemplated by this Agreement dated in December, 1968, (the "December 1968 Agreement") shall, in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph "2" of the Stockholders' Agreement identified in Paragraph "1 (b)" of this December 1968 Agreement.

5. If the transactions contemplated by this December 1968 Agreement are not consummated on or prior to March 1, 1969, this December 1968 Agreement shall be null and void.

If you are in agreement with the foregoing, please execute three counterparts of this December 1968 Agreement and return them to Cohen & Grossberg, Esqs., 505 Park Avenue, New York, N. Y. 10022. This December 1968 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by Entertainment, KEC, DKMI and each of the individuals named in Paragraph "1" hereof.

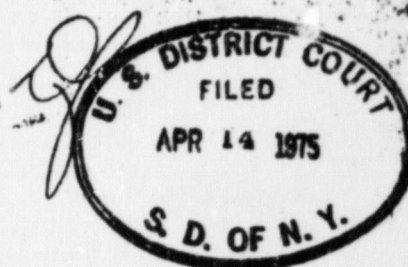
Very truly yours,

Herbert Moelis

ACCEPTED AND AGREED TO:

By   
D.F.L.

## Final Judgment.

*Knapp, J.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LAWRENCE R. BARNETT, C. LEONARD  
GORDON, and ALFRED L. HOLLENDER ✓

: 70 Civil 1875 (WK)

Plaintiffs

: JUDGMENT

-against-

:  
DON KIRSHNER, IRVING COHEN,  
HERBERT T. MOELIS and KIRSHNER  
ENTERTAINMENT CORPORATION  
:

Defendants  
----- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Whitman Knapp, United States District Judge, on December 18 and 19, 1974, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on April 9, 1975, having handed down its opinion, constituting its findings of fact and conclusions of law, in favor of the defendants, it is,

ORDERED, ADJUDGED and DECREED: That defendants DON KIRSHNER, IRVING COHEN, HERBERT T. MOELIS and KIRSHNER ENTERTAINMENT CORPORATION, have judgment against plaintiffs LAWRENCE R. BARNETT, C. LEONARD GORDON and ALFRED L. HOLLENDER dismissing the complaint in its entirety.

Dated: New York, N.Y.  
April 14, 1975

*Raymond F. Burghardt*  
Clerk

MICROFILM



## Excerpts From Joint Pre-Trial Order.

III. Undisputed Facts

1. Plaintiff Barnett (hereafter "Barnett") purchased from Kirshner Entertainment Corporation (hereafter "KEC") in June, 1967, 8,000 shares of common stock at \$1.00 a share and loaned \$32,000 to KEC evidenced by notes of KEC in that amount. (KEC was originally known as Kirshner Productions, Inc.).

2. Barnett was a Director of KEC from January 5, 1968 to December 30, 1968.

3. Plaintiff Gordon purchased in June and September, 1967 from KEC 6,000 shares of common stock at \$1.00 a share and loaned \$24,000 to KEC evidenced by notes of KEC in that amount.

4. Gordon was a Director of KEC from <sup>January</sup> June 5, 1968 to December 30, 1968.

5. Plaintiff Hollender in March, 1968 purchased 8,000 shares of common stock of KEC at \$1.00 a share and \$32,000 of notes of KEC.

6. KEC is a New York corporation.

7. Kirshner has been President, ~~Chairman~~, ~~Chief Executive Officer~~ and Director of KEC since June 29, 1967 to date; and is the owner of more than 40% of the outstanding shares of common stock of KEC.

8. Defendant Cohen was and is a lawyer and a partner in the law firm of Cohen & Grossberg. During the period February 1968 to May 13, 1970 Cohen & Grossberg were counsel to Alan Jay Lerner and the following corporations associated with him, to wit, Allern Management Corp. ("Allern"), Montfort Productions, Inc. ("Montfort"), Alan Jay Lerner Productions, Inc. ("Lerner Productions"), Diena Corporation ("Diena"), Alan Jay Lerner Music Corp. ("Lerner Music"), Diensub Corp.\* ("Diensub"), Montfort Subsidiary Corp.\*\* ("Montfort Sub"), and Allersub Music Corp. ("Allersub").\*

\* Incorporated May 19, 1969.

\*\* Incorporated December 9, 1968.

## Excerpts From Joint Pre-Trial Order.

During the period February 1968 to May 13, 1970 Cohen was a stockholder, officer and director of Lerner Productions, an officer and director of Montfort and a director of Diena. From December 9, 1968 through June 20, 1969 Cohen was a stockholder of Lerner Music and he served as director and vice president of that corporation from February 1968 through June 20, 1969 and as its secretary from January 12, 1970 through May 13, 1970.

Cohen was also a director of Diensub from May 19, 1969 through June 20, 1969 and served as its secretary from January 12, 1970 through May 13, 1970; he was a director and vice president of Montfort Sub from February 3, 1969 through June 20, 1969 and its secretary from January 12, 1970 through May 13, 1970; and Cohen was a director and vice president of Allersub from May 19, 1969 through June 20, 1969 and its secretary from January 12, 1970 through May 13, 1970.

9. On or about August, 1968 Cohen and his law firm became counsel to KEC and since April 4, 1969 Cohen has been Secretary to KEC.

10. Defendant Moelis is a lawyer and at all the times mentioned in the complaint has been First Vice-President, Treasurer, Director and a stockholder of KEC.

11. Plaintiffs and defendants were parties or subject to Purchase Agreement dated June 26, 1967, between KEC and purchasers; Stockholders' Agreement dated June 26, 1967 between 9 individuals and KEC; Amendment dated February 7, 1968 to Purchase Agreement and Stockholders' Agreement; Agreement dated June 26, 1967 between 8 individuals; Stockholders' Agreement dated as of November 8, 1967 between 10 individuals and Don Kirshner Music, Inc. (hereafter "DKMI"); Agreement dated September 18, 1967 between 10 individuals and KEC relating to additional investors and Agreement dated April 23, 1968 between 10 stockholders and KEC.



## Excerpts From Joint Pre-Trial Order.

12. A. David Grossberg, a partner in the law firm of Cohen & Grossberg, wrote letters dated December 23, 1968 to James J. Rochlis, David F. Linowes, Cy Feuer, Alfred L. Hollender, Richard Ornsteen, Herbert J. Siegel and Benjamin Sonnenberg, stockholders of KEC. Each of the letters stated that Gordon and Barnett are selling their interests in KEC; that Gordon's interest is being sold to Herb Moelis and Barnett's interest is being sold to Don Kirshner and Irving Cohen. Each of the letters further stated: "In order to effectuate this transfer, consent of the other stockholders is required, and we are therefore enclosing copies of letters of consent" and each concluded with a request for execution and return of the letters of consent to Cohen & Grossberg.

B. Grossberg's letter stated that it enclosed letters of consent and counterparts each dated December , 1968, and addressed to KEC and Don Kirshner, James J. Rochlis, C. Leonard Gordon, Lawrence R. Barnett, David F. Linowes, Cy Feuer, Alfred L. Hollender, Richard Ornsteen, Herbert J. Siegel and Benjamin Sonnenberg, who were named in paragraph "1" of each letter as parties to the agreements described in paragraph 11 above (hereinafter "the Agreements"). There were three letters with signature lines bearing the typewritten names of Herbert Moelis, Don Kirshner and Irving Cohen, respectively.

C. The letter of consent bearing the name Herbert Moelis stated it was written

"[t]o induce you to permit me to purchase all of the common stock of . . . KEC owned by C. Leonard Gordon"

and it further stated

"I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named therein at the time of their original execution."

## Excerpts From Joint Pre-Trial Order.

It also stated:

"Your consent to the transactions contemplated by this Agreement dated December, 1968 (the "December 1968 Agreement") shall in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph '2' of the Stockholders Agreement identified in Paragraph '1(b)' of this December 1968 Agreement."

It included a request for execution and return of three counterparts of the letter of consent and concluded:

"This December 1968 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by . . . KEC . . . and each of the individuals named in Paragraph '1' hereof."

D. The letter of consent bearing the name Don Kirshner was the same in form and substance as the Moelis letter except for the fact that it stated it was written to induce the respective stockholders to permit and consent to Kirshner's purchase of one-half of Barnett's stock.

E. The letter of consent bearing the name Irving Cohen was the same in form and substance as the Moelis letter except for the fact that it stated it was written to induce the respective stockholders to permit and consent to Cohen's purchase of one-half of Barnett's stock.

F. The Grossberg letter to Richard Ornstein stating that it enclosed the aforesaid three letters of consent, was addressed to him at 718 Merion Square, Gladwynne, Pa.

13. Gordon agreed to sell his KEC stock to Moelis. On or about December 31, 1968 Gordon received payment in satisfaction of notes and money for his KEC stock from Moelis and he delivered to Moelis his stock certificates with instruments sufficient to transfer them to Moelis. Thereafter Gordon deposited the payment from Moelis to a free account.

14. Barnett agreed to sell one-half of his KEC stock to Kirshner and the other one-half of his stock to Cohen.



## Excerpts From Joint Pre-Trial Order.

On or about December 30, 1968 Barnett received payments in satisfaction of notes and money for his KEC stock from Kirshner and Cohen and he delivered to Kirshner and Cohen stock certificates with instruments sufficient to transfer them to Kirshner and Cohen. Thereafter Barnett deposited the payments from Kirshner and Cohen to a free account.

15. Hollender agreed to sell his KEC stock to Cohen or his assignee. On or about January 29, 1969 Hollender received payment in satisfaction of notes and money for his KEC stock from Cohen and he delivered to Cohen his stock certificates with instruments sufficient to transfer them to Cohen or his assignee. Thereafter, Hollender deposited the payment from Cohen to a free account.

16. The real purchaser of Hollender's stock and notes was not Cohen. Cohen acted as nominee for one Irving Moskowitz who in turn acted as nominee for one Harry Saltzman.

17. During the week commencing on February 2, 1969 defendant Moelis telephoned defendant Cohen, whom he knew to be Alan Jay Lerner's representative, and inquired about the possibility of KEC acquiring the Lerner properties. Cohen said Lerner's accountant Israel Katz was negotiating with someone else but that he did not know the exact status of those negotiations and Cohen suggested that defendants Moelis and Kirshner meet with Alan Jay Lerner.

18. On or about February 11, 1969 defendants Kirshner and Moelis met with Alan Jay Lerner and defendant Irving Cohen at the offices of Cohen & Grossberg and defendant Kirshner told Lerner that if given the opportunity to work on Lerner's songs creatively they could enhance Lerner's income and would be the right type of people for him to be associated with.

## Excerpts From Joint Pre-Trial Order.

19. At the time of the Lerner-KEC negotiations, Israel Katz was an officer and director of certain corporations which were part of the Lerner properties including Alan Jay Lerner Music Corp. of which Alan Jay Lerner was the principal stockholder and Irving Cohen and Israel Katz were owners of the remaining stock.

20. After he met with defendants Kirshner, Moelis and Cohen on February 11, 1969 Alan Jay Lerner told Katz that he was impressed with Kirshner. Lerner then authorized Katz to proceed with negotiations for sale of the Lerner properties to KEC.

21. On or about February 12, 1969 Cohen telephoned Katz' office to arrange a meeting with Katz regarding the KEC-Lerner acquisition.

22. On or about February 13, 1969 defendant Cohen met with Israel Katz and they discussed the Lerner-KEC "deal".

23. On or about February 17, 1969 the defendant Moelis met with Israel Katz and they proceeded with the negotiations for acquisition of the Lerner properties by KEC.

24. A. David Grossberg wrote letters dated February 19, 1969 to James J. Rochlis, David F. Linowes, Cy Feuer, Richard Ornstein, Herbert J. Siegel, Benjamin Sonnenberg, Irving Cohen, Donald Kirshner and Herbert Moelis, stockholders of KEC. Each of the letters stated that Alfred L. Hollender is selling his interest in KEC to Irving Cohen for further assignment by Mr. Cohen. Each letter stated that it enclosed "a copy of a letter of consent to this transfer" and requested execution and return of the same to Cohen & Grossberg in the self-addressed envelope enclosed.

B. The letter of consent stated as enclosed



## Excerpts From Joint Pre-Trial Order.

in Grossberg's letter of February 19, 1969 was dated January 29, 1969 and had a signature line bearing the name Irving Cohen. Except for the fact that it stated that it was written to induce the respective stockholders to permit and consent to Cohen's purchase of Hollender's stock in his own name for possible assignment to others, this consent letter was the same in form and substance as the three consent letters hereinbefore described in paragraph 12 above.

C. The Grossberg letter to Richard Ornstein of February 19, 1969 stating it enclosed the aforesaid letter of consent was addressed to him at 718 Merion Square, Gladwynne, Pa.

25. On or about March 13, 1969 an agreement was entered into by and between KEC and Alan Jay Lerner, Irving Cohen and Israel Katz which provided, among other things, for the acquisition of certain Lerner properties (hereafter "the Lerner properties") by KEC, including the outstanding stock of the Lerner properties owned and controlled by the defendant Cohen, and that KEC would undertake to arrange for the registration and public offering of its stock on or before January 15, 1970, and that if the public offering did not take place on or before January 15, 1970 either party had the right to terminate the agreement. By letter dated January 12, 1970 the date for exercise of the right to terminate was extended to March 30, 1970.

26. Barnett, Gordon and Hollender knew of the Lerner acquisition in March, 1969.

27. On or about April, 1969 after completion of KEC's acquisition of the Lerner properties, its stock was split five-for-one.

28. On or about March 12, 1970 KEC made a public

Excerpts From Joint Pre-Trial Order.

offering of its stock at \$10 per share.

29. This action was commenced on or about May 7,  
1970.



Parts of Stenographer's Minutes  
Designated by Plaintiffs-Appellants.

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8 OPENING STATEMENT of Barry Fredericks, Esq.,  
of Counsel to Defendants.

\* \* \* \*

9 That is how the Hollender shares come about.

10 On January 10th Hollender writes a letter to  
11 the company and says, "I will accept your offer to sell,  
12 that offer being the general offer made to all stockholders  
13 that anybody unhappy will be bought out."

14 Cohen buys those shares as a nominee. Nobody  
15 hides the fact that he was a nominee.

16 Mr. Brady is concerned that he didn't know it  
17 was Saltzman. No doubt about it, because everybody be-  
18 lieved that if Hollender knew that his shares were going  
19 to Saltzman, the man who he had now personally got into  
20 a quarrel over over Haft, there was no way he was going  
21 to sell those shares, and Moelis --

22 THE COURT: Why is that?

23 MR. FREDERICKS: Because there was bad blood  
24 here between Hollender and Saltzman. Saltzman had fired his  
25 man.

## Opening Statement.

gt:mg

22

Moelis and Kirshner took the position, "It is not our concern, if that is what Saltzman wants to do, he is the man on the scene, fine."

We have the man who is dissatisfied, we have Kirshner and Moelis who say anybody who is dissatisfied gets out.

Their feeling was if Hollender knew it was Saltzman who was buying him out, he never would have sold, and that is the significance of the whole thing, and this Mr. Moskowitz was Mr. Saltzman's attorney so Cohen acted as a nominee for Mr. Moskowitz who ultimately sold it to Mr. Saltzman.

I mean, it is as simple as that.

\* \* \*



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3 Testimony of Irving Cohen - Cross-Examination.

4 \* \* \*

5 Q What was the reason, Mr. Cohen, for the non-dis-  
6 closure of the real principal in connection with the ac-  
7 quisition of the Hollender stock?8 A I was instructed by Irving Moskowitz not to dis-  
9 close his client's name. Hence the reason.10 Q And did you or did you not think that you owed  
11 Mr. Hollender the duty of telling him the truth?

12 Just answer yes or no, sir.

13 MR. FREDERICKS: Your Honor, the truth--

14 THE COURT: He already said he didn't feel he had  
15 any fiduciary obligation to Mr. Hollender in this transac-  
16 tion.17 \* \* \*  
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Cohen-cross

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Q Were you advised before January 29th, 1969, that if Mr. Hollender learned or was informed that Mr. Saltzman was to be the purchaser of his stock, he would not sell?

A No, I don't think so. I think Mr. Moskowitz told me that he would rather not disclose to Mr. Hollender that Mr. Saltzman would be the ultimate purchaser.



eb:mg

Cohen-cross

348

I don't recall Mr. Moskowitz saying to me that if I disclosed that information, he wouldn't sell. I'm not so sure that he ever said that to me.

Q I am not talking about what Mr. Moskowitz said.

I'm talking about whether you received that information or you made that statement in the course of a conference between you, Mr. Moelis, Saltzman and Moskowitz?

A I didn't make that statement. Someone else may have made it but I didn't make it.

Q Did Mr. Saltzman make that statement in your presence?

A Possibly. I don't recall, sir. Could very well have.

THE COURT: You don't recall?

THE WITNESS: I don't recall it, no.

Q Do you recall in fact that you prepared a memorandum to that effect?

A No, but if there is one, I would like to see it.

\* \* \*

eb:mg

Cohen-cross

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Q I show you Exhibit 202 for identification and  
direct your attention to the fact that on the upper left-



1  
2 hand corner are the initials IC: CR 5/20/70.

3 Who is IC?

4 A Would you let me see the memorandum, please?

5 Q Can you tell us who IC is before you--

6 A They are my initials but I don't know the sig-  
7 nificance of it.

8 May I see that, please?

9 Q All right (handing).

10 A In this case this refers to me. I thought you  
11 were going to let me look at it.

12 Q I will let you look at it in a minute.

13 A I'm sorry.

14 Q Who is the CR?

15 A (No response)

16 Q It is a typist in your office, isn't it?

17 A Yes. I would need some help on that.

18 THE COURT: It is a typist?

19 THE WITNESS: Yes. I thought you wanted the  
20 name. She is quite obviously the typist.

21 Q And the date 5/20/70 indicates it was prepared at  
22 that time by you?

23 A May I see it again, please?

24 Q Yes (handing).

25 A Yes.

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2 Q And on the right-hand side is "Copies to Herb  
3 Moelis, Benjamin Zinkin, David Grossberg" -- is that cor-  
4 rect?

5 A May I see it, please.  
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11 MR. BRADY: If your Honor please, I want to first  
12 establish the document was prepared by him and then I want  
13 to ask him a question as to one of the sentences in there.

14 A I prepared this document, sir.  
15 \* \* \*



\* \* \*

MR. BRADY: I want to offer the concluding two paragraphs on page 3, and I will show it to your Honor, if you will, and I think the penultimate paragraph, your Honor, is one line.

THE COURT: You mean the first of all the full paragraphs there are on page 3?

MR. BRADY: Yes, sir.

THE COURT: Beginning on January 29 or on January 10?

MR. BRADY: January 29, I think.

THE COURT: All right, I will read from January 29.

\* \* \*

(Pause)

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6 THE COURT: All right, the last two paragraphs  
7 are received in evidence.

8 We will call that Exhibit 202A, it being the last  
9 two paragraphs of Exhibit 220. They are now in evidence.

xx 10 (Plaintiffs Exhibit 202A received in evi-  
11 dence)

12 MR. BRADY: Shall I read them for the record,  
13 your Honor, since the rest isn't in?

14 THE COURT: Yes.

15 MR. BRADY: "January 29, Wednesday, Hollender  
16 Transaction.

17 "On January 27, 1969, Saltzman met with Moskowitz,  
18 Kirshner, Moelis and Cohen in Kirshner's office. Saltzman  
19 was to discuss many aspects of the company. Saltzman was  
20 told that Hollender was selling his stock. 'Was he willing  
21 to buy it?' "Saltzman said, 'Yes.'"

22 "Saltzman wanted Moskowitz to hold the stock as  
23 a nominee and Hollender was moving and wanted the company's  
24 transaction as quickly as possible for he had very little  
25 time.



eb:mg

Cohen-cross

354

"Saltzman didn't want Hollender to know that he was buying any shares because he fired Haft and because of this fight he therefore wanted Moskovitz to buy stock in his name and to use Cohen as a nominee vis-a-vis Hollender."

THE COURT: You typed that?

THE WITNESS: Yes, sir.

THE COURT: So I assume it must have happened?

THE WITNESS: Yes, sir. I don't dispute it or deny it.

THE COURT: Does it refresh your recollection?

THE WITNESS: Yes. Absolutely.

THE COURT: It does refresh your recollection.

THE WITNESS: That's what happened. Yes, your Honor.

\* \* \*

1 eb:mg

51a  
Hollender-direct

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4 Parts of Stenographer's Minutes Designated  
by Defendants-Appellees.  
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6 Testimony of Alfred L. Hollender  
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14 DIRECT EXAMINATION

15 \* \* \*

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20 Q And prior to that, what was your business?

21 A I was an executive vice president of Chris Craft  
22 Industries.  
23 \* \* \*



eb:mg

Hollender-direct

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Q Did there come a time when you had conversations regarding the sale of your stock?

A Yes.

Q Will you tell us how that came about, between whom?

A There was a period, I guess -- well, it was early January, on a Sunday morning, when I had a call from David Haft.

Now, Haft was a personal friend of mine. Harry Saltzman, who was quite a creative gentleman but a rather prolific spende-, got into trouble on the budget for the production of the Battle of Britain which he was doing apart from the Bond pictures, and when I saw him, he said,

eb:mg

Hollender-direct

74

"Boy, this thing is going way over budget, and the Government of England is concerned about it."

I said, "What you need is a good businessman to help you."

And I said, "I will recommend somebody to you who is in London, doesn't really need a job but is interested, by the name of David Haft."

He hired Haft subsequently.

Haft did a good job on the Battle of Britain and--

\* \* \*

THE WITNESS: I thought he did a good job because he then assigned him to work on the Kirshner-Saltzman picture.

THE COURT: He was working for the company, was he?

THE WITNESS: The Saltzman Company. Saltzman had a separate company from the James Bond Enterprise.



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Hollender-direct

75

1                   THE COURT:   That had nothing to do with  
2  
3   Kirshner then?

4                   THE WITNESS:  Not at that moment, but subsequently  
5   they formed a second company to do the Kirshner-Saltzman  
6   picture that I discussed with them, and Saltzman signed  
7   Haft as his representative as sort of an executive producer  
8   working out of London because Kirshner was in this country.

9                   THE COURT:  I see.

10                  A     They worked a while, apparently, along this line,  
11   until one morning I got this rather surprise call from  
12   Haft saying, "I have been fired from Saltzman Productions."

13                   And I said, "What happened?"

14                   He said, "Well, Kirshner objected to me ques-  
15   tioning a lot of expenses on things I was doing, and he  
16   got Saltzman to fire me."

17                   I said, "Gee, that's surprising in view of the  
18   relationship" and he said, "The only reason I am calling  
19   you is that I expect you will get a call from Harry Saltzman  
20   either this afternoon or tomorrow to tell you that this had  
21   taken place."

22                   I said, "Well, maybe if that is going to happen,  
23   I better find out a little more about what happened and  
24   get the other side of the story from Kirshner."

25                   The next morning, on a Monday, I tried to reach

eb:mq

Hollender-direct

76

1 eb:mq  
2 Kirshner, and in view of the fact that up to then I had  
3 had --

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16 A I tried to reach Kirshner that morning, and I  
17 was told that he wasn't available.

18 And this, I might indicate, was probably the  
19 first time in a matter of six months that Kirshner wasn't  
20 available to me because I had done many things with him to  
21 help him, and our relationship had been terribly close.

22 I tried to reach him probably three times that  
23 day, and toward the latter part of the day, I guess it was  
24 probably the third call, Moelis got on the phone, and he  
25 said, "What do you want from Donny?"



1  
2 I am not sure of the exact words but it was to  
3 that effect.

4 And I said, "Well, I had a call from David Haft  
5 that he was fired by Saltzman and before I talk to Saltzman  
6 or even if I don't, I am curious to know why this sudden  
7 turnabout because when I saw Saltzman in London with  
8 Kirshner" -- and I had made the trip to help bring their  
9 deal together -- "they seemed to be very, very close and  
10 very happy with it, and Saltzman thanked me for bringing  
11 Haft into the picture."

12 So I said, "Naturally I was curious to know  
13 why this sharp turnabout took place."

14 And Moelis said, "It is none of your business."

15 I said, "Gee, in view of our relationship, that  
16 is a rather surprising answer."

17 Moelis said, "If you don't like the way we are  
18 running the company, why don't you get out and we will give  
19 you your money back?"

20 I said, "I am shocked by hearing something like  
21 that because we have had such a close relationship. Can't  
22 I talk to Donny?"

23 And he said, "Donny is too busy to talk to you."

24 I hung up because the conversation was upsetting  
25 to me, and I tried to reach -- after hanging up, I tried

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Hollender-direct

78

1 to reach Kirshner again, but a female -- I don't know who  
2 it was -- told me that he was either unavailable, busy, or  
3 out, and then I gave up, and that was the conclusion of  
4 that part of it.  
5

6 After that, as I recall, I wrote a letter to  
7 Irving Cohen telling him that I had made that decision be-  
8 cause by then I had lost confidence in-- I began to under-  
9 stand that maybe there was some reason for this but I  
10 didn't know what it was.

11 MR. FREDERICKS: Your Honor, could I ask Mr.  
12 Brady to fix a time for us on this transaction that we  
13 have just been told about?

14 MR. BRADY: About this conversation with Moelis?

15 MR. FREDERICKS: Well, the conversation -- I  
16 would like to know approximately when the conversation came  
17 about with Haft, and then the subsequent conversation with  
18 Mr. Moelis, so we have a time frame.

19 Q Can you fix that?

20 A I don't know if I can do it exactly but maybe  
21 by working backwards, I can.

22 The sale was consummated, the transaction was  
23 consummated on July 29th. I think the letter I wrote to  
24 Irving Cohen -

25 MR. FREDERICKS: That is January 29th?



1  
2 THE WITNESS: I'm sorry?

3 MR. FREDERICKS: The letter you wrote to Irving  
4 Cohen was January 10th?

5 THE WITNESS: That is correct. It was easier  
6 for me to do it that way.

7 A If it was January 10, I know I wrote the letter  
8 to Irving Cohen within a day or hours after the conversa-  
9 tion with Moelis, so I would guess that conversation had  
10 to be about January 8th or 9th.

11 I know I was quite upset at that time, and an-  
12 noyed, and I really had lost confidence in them.

13 I'm sorry.

14 I called Irving Cohen after that, after the  
15 Moelis conversation, because again, I was, having recom-  
16 mended him to Kirshner as his counsel, I felt that we had  
17 a good, friendly relationship, and since something had gone  
18 awry, obviously, with Kirshner and Moelis, I thought I  
19 would ask Cohen what this was all about, and I said, "You  
20 know, I'm going to lose confidence in these people because  
21 this has been such a turnabout from my previous experience."

22 Cohen was rather noncommittal about it.

23 He said, "Well, if you want to sell your stock,  
24 and they told you they would take you out, I will work it  
25 out for you and maybe that's the best thing to do."

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2 So that had to come all between the telephone  
3 call -- if I work back, it had to have been within a 48-  
4 hour period.  
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What was signed on January 29th?

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MR. BRADY: What was signed was the transfer,

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which is Exhibit 58.

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BY MR. BRADY:

Q When did you first learn that Kirshner Entertainment Corporation had acquired or was about to acquire the Lerner properties?

A I can't give you an exact date but it was a few months after the purchase.

THE COURT: The sale, you mean?

THE WITNESS: My sale, their purchase, of my stock.

A I guess it was around March but I can't testify to an exact date for that.



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Hollender-direct

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Q Mr. Hollender, if you had known that Saltzman was the real purchaser of your stock, would you have sold it?

A No, sir.

Q Beg your pardon?

A No, sir.

Q Why?

A I would have smelled some kind of a rat, that something would have been going on that I didn't know about, and I would have inquired a lot more before I did anything. I was assuming that the stock was being purchased either by Kirshner -- I assumed basically that the corporation was buying it, or Irving Cohen, who had sent me the check.

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2 There was no discussion of anybody else buying  
3 the stock.  
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## CROSS-EXAMINATION

BY MR. FREDERICKS:

Q Mr. Hollender, did you acquire any debentures  
of Chris Craft in 1968?

A Yes, sir.

\* \* \*

Q And how much of an acquisition of the Chris  
Craft debentures did you make several months later?

A A million dollars.

Q Excuse me?

A A million dollars.



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Hollender-cross

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Q Now, you told us that you had this conversation with Mr. Moelis and he told you that as far as the situation, it was none of your business?

A Yes.

Q And that based on that conversation, you lost your confidence in the company and decided that you didn't want to be involved with them any longer, and therefore you wanted to sell out or get rid of your shares, is that correct?

A Yes. I don't think the loss of confidence stemmed solely from that one conversation. It contributed.

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11 A Yes.

12 Q It seemed strange to you that they had, in  
13 November or December, told you that they were prepared to  
14 buy out any stockholder who was unhappy and that they  
15 specifically asked you to talk to Barnett and Gordon and  
16 others, is that right? And you felt concerned on January  
17 8th, is that correct?

18 A Well, the first thing was the concern and the  
19 annoyance and being taken aback by the way I was treated  
20 by Moelis.

21 Q Right.

22 A I didn't do anything about it on that telephone  
23 call.

24 Q But you told us that that was one of the elements,  
25 that treatment by Mr. Moelis, which caused you to lose



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Hollender-cross

114

confidence in the company?

A Right.

Q And my question to you was, what else caused you to lose confidence, and you said you considered for the first time and were concerned why they had asked you to talk to these other stockholders, is that right?

A Yes.

Q How did that affect your confidence or lack of confidence in the company?

A Well, I began to wonder first what this was all about. I hadn't put any of this together and I didn't understand any of it.

Q What what was all about, sir?

A This willingness to buy the other stock back, the sudden change in the attitude towards me, and so forth.

Q And so on January 8, when you were still a stockholder of Kirshner's company, you began to be concerned about what you called "what this was all about"?

A It didn't all happen at one second. I had the telephone call, I was very upset about it, I thought a good deal about why this should happen. It was a big change of events.

Q You were concerned about it at least before you wrote the letter of January 10th saying "I will accept

1 eb:mg

Hollender-cross

115

2 your offer to sell"?

3 A Right.

4 Q What did you do to discover the facts which had  
5 created this fear in your mind? What action did you take?

6 A I don't understand the question.

7 Q You had a concern? You had some doubt? You  
8 didn't understand? You felt something was wrong? You are  
9 an executive, you are a businessman.10 When one has some fear or concern, one either  
11 conducts an investigation to determine whether his fear is  
12 proper or groundless or one just simply closes one's eyes  
13 and proceeds along a particular course of conduct.

14 Which road did you take?

15 A The action I took was to try to get Kirshner  
16 on the telephone and ask him, but he wouldn't talk to  
17 me.

18 Q But you did speak to Mr. Cohen, right?

19 A Afterwards, yes, and I tried to find out more  
20 from him.21 Q What did you ask him? You got him on the  
22 telephone. What did you ask Mr. Cohen?23 A First I told him what happened, and I said,  
24 "What is going on?"

25 And he wasn't very helpful to me. All he said



eb:mg

Hollender-cross

116

1 to me - - and again I can't recall words that took place  
2 in a conversation so many years ago-- but the gist of it  
3 was, "Look, if you want to sell, I will take care of the  
4 details."  
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Q And then you wrote the letter the next day accepting their offer?

A Right.

Q And at the time you wrote the letter -- excuse me -- at the time you wrote the letter, you had had the conversation with Moelis, you had lost confidence, you had this concern, you had this conversation with Cohen which you deemed to be unsatisfactory, and you decided to sell your shares?

A Yes.

Q Now you told us that had you known that Mr. Saltzman was the ultimate purchaser, you would have smelled a rat, is that what you told us earlier?

A Yes.

Q Would you tell me what the basis for that statement was? Why was the fact that Mr. Saltzman was buying your shares, why would that have created any question in your mind?

A Yes. Because when I first talked to Saltzman in



eb:mg

Hollender-cross

118

1 London about Kirshner's business, I said, "This thing  
2 looks fairly interesting," and we were then talking about  
3 this movie production thing. I said, "Maybe you ought  
4 to get interested in it."  
5

6 And he said, "I've got all I want."

7 Q And when was that? What year?

8 A That was when they were first talking about the  
9 movie production.

10 Q That was even before you acquired your stock,  
11 wasn't it? That was before March of 1968?

12 A No, it was about the time of that --

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10 Q And so you are telling me that since Mr. Saltzman,  
11 in the early stages of his dealings with Mr. Kirshner, back  
12 in 1968, had expressed, not even expressed an interest but  
13 simply said "I have at this time all the investments I  
14 need," if he, some time in January --

15 A Those are not my words. Those are your words.

16 Q Well, why don't you give me Mr. Saltzman's words?  
17 What did he say to you?

18 A I can't recall the words except that he was not  
19 interested.

20 Q He wasn't interested for whatever reason, whether  
21 he had over-invested, whether he didn't think it was a good  
22 time investment, he had big spending plans, whatever the  
23 reason was, in March of 1968 you knew he wasn't interested,  
24 is that right?

25 A I don't know the date.



1 eb:mg  
2 Q Well, some time around there. I don't know the  
3 date either. I wasn't at the conversation.

4 And as best you can fix it, it is March of 1968?

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20 Q Now in January of 1969, almost a year later, you  
21 say if you knew that Saltzman was buying it, you would have  
22 immediately smelled a rat? Why?

23 A Because nothing else had changed in the Kirshner  
24 picture that had been in existence at the time Saltzman  
25 and I talked about the Kirshner thing, and I had to ask

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Hollender-cross

121

myself why suddenly at this stage of the game he would  
have reversed himself.

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Testimony of Lawrence R. Barnett.

\* \* \*

A I think they took place mostly -- well, there were conversations during the whole time I was on the board of directors of Kirshner Entertainment.

But I became unhappy approximately, oh, about June 1st.

Q June 1st of what year?

A 1968.

Q Did you express your dissatisfaction?

A Yes, I did, to Mr. Kirshner and Mr. Moelis.

\* \* \*

THE WITNESS:     of 1968.

\* \* \*

Q     When for the first time did you consider selling  
your stock?

A     I believe in August I talked to Mr. Siegel about  
it and he said he would talk to Mr. Kirshner to see if  
they wanted to buy me out because I was so unhappy.

\* \* \*



\* \* \*

I knew I had an obligation of \$80.000 they could ask me for.

\* \* \*

139

THE COURT: But you talked to Mr. Siegel about selling your stock, and Mr. Siegel didn't have authority to buy it or didn't have any interest in buying it? And he didn't offer to buy it himself?

THE WITNESS: That is right.

THE COURT: What else did he say?

THE WITNESS: He said, "I will see about getting somebody to buy you out if you are unhappy."

Q With whom did you have any conversations

1 rnz",mq

Barnett-direct

140

2 subsequently regarding the selling or purchasing of your  
3 stock?

4 A Well, I think the first conversation was Al  
5 Hollender talking to me.

6 Q About when was that?

7 A I believe that was in - my memory kind of sets  
8 the date as the last of October, the first of November.  
9

10 \* \* \*

11  
12 THE COURT: What was Hollender's conversation with  
13 you?

14 \* \* \*

15 THE WITNESS: He came and told me he just had  
16 a meeting with Kirshner and Moelis and they knew he was  
17 unhappy and that Mr. Kirshner would buy me out.

18 And I said, "Well, I am interested."

19 Q And who spoke to you then about it?

20 A Mr. Moelis. I called Mr. Moelis about it.

21 Q And were any papers signed in connection with the  
22 matter?

23 THE COURT: What did Moelis say when you called  
24 him?

25 THE WITNESS: Mr. Moelis confirmed that Mr. Kirshner  
would buy my stock and I said, "Well, draw up the papers



eb:mg

Barnett-direct

141

and I will deliver you the stock and the notes."

This was in November, I think around the first of November or the second week in November. I don't remember the exact date.

Q Well, now, when did the transaction regarding the purchase and sale of your stock take place?

A Well, I kept after Mr. Moelis on the phone. "What was happening? What was happening?"

He finally told me it looked like the whole deal was out.

And then he called me back around the first of December and told me that Irving Cohen was going to buy my stock.

Q Now, what happened between December 10th and December 30th?

A Well, I called Mr. Moelis and I said, "Where are the papers?" And he said for me to call Mr. Grossberg.

I called Mr. Grossberg and he said, well, he was drawing the papers up.

THE COURT: Mr. Grossberg was Mr. Cohen's partner?

THE WITNESS: Correct.

A And I had known Mr. Grossberg for many years. And I couldn't get my papers. So I didn't know whether I

had a deal or I didn't have a deal.

Finally one morning Mr. Grossberg called me early in the morning and said, "Look, we are going to go through with the deal, and are you available?"

I think this was the 28th or the 29th.

I said "I am available."

And he came over, I think, on the 30th of December, and I remember we went back to our conference room, and this was very late in the day, and he said, "Is Mr. Gordon there?" And I said, "Well, he is working on some papers. I know he will be back later."

We concluded our deal in the conference room and he gave me two checks.

\* \* \*



eb:mg

Barnett-cross

148

\* \* \*

Q Mr. Barnett, you testified that you had some disagreement with Mr. Moelis and Mr. Kirshner over basic philosophy, is that correct, about how to proceed with the company?

A Yes.

Q And that you manifested an intent in August of 1968 to sell your stock and get out of the company?

A Yes.

Q And on December 30, 1968, the transaction buying out your stock was completed?

A Yes.

\* \* \*

Testimony of C. Leonard Gordon.

Q Mr. Gordon, are you a lawyer?

A Yes, I am.

Q Are you practicing in New York City?

A Yes, I am.

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12 Q In August 1968, or several months prior thereto,  
13 did you know Mr. Cohen's connections as attorney for any  
14 other clients in the entertainment industry?

15 A Yes, I did. He was counsel for Feuer and Martin,  
16 and I had met him in that connection in the first place.  
17 I think I might have met him earlier but that was where  
18 I really got to know him when we were really involved in  
19 a proxy contest and tender offer on the same side in con-  
20 nection with Paramount Pictures.

21 His clients, Feuer and Martin, were very good  
22 friends of mine. Cy Feuer is one of my very best friends,  
23 was and is. And I also knew that Mr. Cohen was counsel  
24 for Alan J. Lerner and that was one of the things that I  
25 mentioned to Moelis when he asked me about Cohen.

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2 He said that he was counsel for Lerner and  
3 that might prove useful.  
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22 A Al told me that there was a good chance that  
23 Kirshner Entertainment was going to call for more money.  
24 We had previously been told that although they had the  
25 right to call for more money they probably weren't going



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2 to, and that they were willing to buy out anybody who was  
3 dissatisfied.

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13 Q When for the first time did you consider selling  
14 your stock?

15 A Herb Siegel then talked to me and told me that  
16 Kirshner was prepared to buy out--

17 THE COURT: When was this conversation?

18 THE WITNESS: This was still not too far from  
19 the Hollender conversation. November some time is when I  
20 place it.

21 A He said that Kirshner was offering to buy out  
22 anybody who was dissatisfied, and I said "I am not dis-  
23 satisfied. I know that Larry is."

24 And Herb suggested that I should sell out.

25 And I said that I would consider it.

1 THE COURT: Why did he tell you you ought to  
2 sell out?

3 THE WITNESS: He said it was a lost corporation.  
4 If it was going to go anywhere he thought it was going to  
5 be far off in the future.  
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14 Q Did there come a time when you stated you would  
15 sell your stock?

16 A Yes.

17 Q Can you fix that time?

18 A I'm not exactly sure. It was late November or  
19 early December that I talked to Moelis. He told me he  
20 understood -- he told me that he had heard I was willing to  
21 sell my stock, and I must have told Herb that I was willing  
22 to, or somebody, that I was willing to, for him to have  
23 said that --

24 \* \* \*



\* \* \*

When I was saying "Herb" I was referring to Siegel.

A I speculated that I might have told Herb Siegel which caused Herb Moelis to call me.

\* \* \*

\* \* \*

Q When for the first time did you advise anybody that you would sell your stock?

A It didn't happen that I advised somebody I would sell my stock.

I got a call when I got back, some time after I got back, from Irving Cohen, asking me about the mechanics of my selling my stock. I forget exactly what it was.

And then I think it was the day before I sold the stock, the day before the 28th, or something like that, that I got calls about would I be able to meet and sell my stock the following day.

\* \* \*



\* \* \*

Q Did you discuss the nature or effect of this letter with Mr. Grossberg?

A No, I didn't.

Q At what time was the transaction completed, to the best of your recollection?

A Very late in the day, after seven o'clock, I think, or six o'clock, at least.

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Gordon-cross

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Q Now, Mr. Gordon, did you not make a substantial



investment in 1968 in Chrisraft debentures?

A Yes, I did.

Q What was the amount of that investment?

A \$550,000 more or less, approximately that.

Q And didn't you have to borrow money to make that investment?

A Yes, I did.

Q And didn't Mr. Siegel guarantee that loan?

A Yes, he did.

Q And wasn't it Mr. Siegel who pressured you to sell your stock in KEC?

A I am not sure I would characterize it as pressure but he certainly suggested it.

Q Did Mr. Moelis suggest it or didn't he just call you up and say "I hear you want to sell your stock"?

A Moelis called me and said, "I hear you want to sell your stock."

Q Up until that time, you had no conversations with Moelis, did you?

A No.

Q And you had no conversations with Kirshner about selling your stock, did you?

A No.

Q Did you have any conversations with Cohen about

1  
2 selling your stock?

3 A No.

4 Q The only one that you had any conversation with  
5 was Siegel?

6 A Siegel transmitted to me their offer.

7 Q And their offer was that "We will buy out any  
8 shareholder who is unhappy"?

9 A Right.

10 "Buy out any shareholder who is unhappy."

11 Q Any shareholder who is unhappy?

12 A That's right.

13 Q But Moelis didn't pressure you to sell did he?

14 A No.

15 Q And Moelis and Kirshner didn't pressure you to  
16 sell, did they?

17 A In my office, standing there, talking --

18 Q I am talking about prior to December 8th.

19 A No, they did not.

20 Q And Cohen didn't pressure you to sell, did he?

21 A No.

22 Q But Siegel did, didn't he?

23 A Siegel suggested that I sell.

24 Q When you say suggested, it was a continuous  
25 suggestion, wasn't it?



eb:mg

Gordon-cross

183

1 eb:mg  
2 A No, it wasn't. He suggested it once, maybe  
3 twice.

4 Q Maybe twice?

5 A That's right.

6 THE COURT: What did you say?

7 THE WITNESS: One or maybe twice.

8 Q And you agreed to sell

9 A That's right.

10 Q And you sold on December 30th?

11 A Yes.  
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16 Q Mr. Gordon, on the day in question when you  
17 signed Exhibits 9, 10, 11 and 12 and 13 that I just showed  
18 you, you received checks or money?

19 A Yes.

20 Q Did you not receive a letter for reimbursement  
21 for transfer stamps on the certificates? Did you get a  
22 letter from Cohen & Grossberg?

23 A Subsequently I was asked for a check for transfer  
24 stamps and I sent them a check.

25 Q And that was the early part of January, wasn't it?



eb:mg

Gordon-cross/redirect

187

1  
2 A That is correct.

3 Q And the check that you got you deposited in your  
4 account?

5 A That is correct.

6 Q That didn't segregate it?

7 A No, sir.

8 \* \* \*

Deposition Testimony of Herbert Moelis Read at Trial.

\* \* \*

"Q Did there come a time when there was a discussion  
or consideration of a merger and acquisition or combination  
with Alan J. Lerner Companies?"

\* \* \*



\* \* \*

"A Yes.

"Q I believe you said that came about in February 1969?

"A That is correct.

"Q Would you please tell us how it came about?

"A It came about through a phone call that I made to Irving Cohen.

"Q Where were you when you made that phone call and where was Mr. Cohen?

"A I was home, and I believe he was home.

"Q Do you want to tell us the nature of that phone call?

"A Yes. I had thought of the idea of making an acquisition of Alan J. Lerner's rights, and inquired of Mr. Cohen, who I knew represented Mr. Lerner, if that was possible.

"That was the initial phone call.

"Q What did Mr. Cohen say?

"A Mr. Cohen told me that they had negotiations being conducted for Mr. Lerner to sell his rights to another company but that he did not know the exact status of that

eb:mq

"Moelis " direct

215

as it was being handled by Mr. Katz, who was Mr. Lerner's  
accountant."

\* \* \*



eb:mq

"Moelis" direct

224

\* \* \*

23 | "Q That Mr. Hollender wished to sell his stock?

"A Yes, I transmitted it to Mr. Moskovitz and Mr.  
Saltzman that Mr. Hollender wished to sell the stock.

eb:mg

"Moelis" direct

225

"Q You had a personal talk with these gentlemen?

"A Yes.

"Q Where?

"A I don't recall. It may have been in our office; it might have been in Mr. Moskowitz' office.

"Q What was the substance of the conversation?

"A The substance of the conversation was basically that Mr. Hollender wished to sell his stock in the corporation and we were interested in purchasing it.

\* \* \*

"Q Did they ask to see any records or any financial information?

"A I don't recall if they did or not. I don't think so.

"Q What was said to them regarding the value of the investment?

"A No representation was made as to the value of the investment. I think Mr. Moskowitz, to my recollection, was made aware. They might have been provided with an annual



1 eb:mg

"Moelis" direct

226

2 report for 1967 which was the only one available at the  
3 time.

4 "Q Who put up the money for the purchase?

5 "A Mr. Moskovitz.

6 "Q In what fashion?

7 "A Check.

\* \* \*

"Q When did you ever discuss with Mr. Moskowitz for the first time the purchase of stock of Kirshner Entertainment Corporation?

"A After Mr. Hollender indicated he wanted to sell his stock.

"Q When was that?

"A January of 1969.

"Q Do you know whether Mr. Moskowitz bought the stock for himself?

"A No. I understand he was buying it on behalf of Mr. Saltzman.

"Q Who told you that?

"A Mr. Moskowitz and Mr. Saltzman.

"Q Who paid for it?

"A I believe the stock was originally transferred to Mr. Cohen who in turn transferred it to Mr. Moskowitz.

"Q So you had two nominees in the acquisition of the stock?



eb:mg

"Moelis " direct

234

"A "Right. "

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eb:mg

"Moelis" cross

244

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"Q How long did it take to get those consents?

24

"A You mean from Mr. Barnett and --

25

"Q From all the stockholders.



eb:mg

"Moelis" cross

245

1  
2 "A Mr. Barnett's and Mr. Gordon's was gotten, verbal  
3 consents. I don't recall when the exact papers of consent  
4 were filed, but I know that the consent was gotten in  
5 December prior to them selling the stock and the same thing  
6 for Hollender.

7 "Q When did you get the consent from all the stock-  
8 holders because you needed their consents?

9 "A I just answered your question. I said the verbal  
10 consent of the stockholders were gotten in December.

11 "Q Who got the consents?

12 "A Mr. Siegel."

13 "I should correct that. Mr. Siegel on behalf of  
14 certain people, and Mr. Kirshner consented, of course, by  
15 himself, because he was a stockholder, and Mr. Siegel did  
16 for the rest of the stockholders."

17  
18 \* \* \*

1 eb:mq

Cohen - direct

254

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6 Testimony of Irving Cohen.  
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23  
24 Q Mr. Cohen, what do you do for a living?

25 A I am a lawyer.



1 eb:mg

Cohen-direct

255

2 Q And with whom do you practice?

3 A David Grossberg and I are partners in a firm  
4 called Cohen & Grossberg.5 Q Are you admitted to the bar of the State of New  
6 York?

7 A Yes.

8 \* \* \*

9  
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11 Q And do you have any specialty, I mean something  
12 that would be classified as a specialty, sir?13 A Well, I guess you could classify us as special-  
14 izing in the entertainment field of law.

15 \* \* \*

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eb:mq

Cohen-cross

09

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3 Q What was your conversation with Mr. Hollender?

4 A Mr. Hollender thought that Mr. Kirshner and Mr.  
5 Moelis were not running the company properly and they had  
6 been guilty of betraying a friend, a fellow by the name of  
7 Haft, who was supposed to work with Harry Saltzman on a  
8 picture that Don Kirshner was to make with Harry Saltzman  
9 called "Tomorrow" and Mr. Hollender thought that his friend  
10 had been betrayed because Harry Saltzman had fired his  
11 friend Haft or Hanft, I don't recall the name, and I said  
12 I knew nothing about it, which was the fact. I didn't  
13 know him and never met him.

14 And he suggested that I do not consider to rep-  
15 resent Mr. Kirshner's company because he thought I shouldn't  
16 be associated with him.

17 Q And what did you say?

18 A I said I didn't agree with him.

19 Q And what did you say about buying his stock?

20 A What did I say about buying the stock? I guess  
21 my recollection is that -- my recollection is that I said  
22 I was buying the stock for someone else, and I didn't dis-  
23 close at the time who it was for.

24 \* \* \*



1 23tag

6 \* \* \*

7 Q Now, I still say, sir, in the Hollender matter,  
8 were you acting as attorney for Moelis?

9 A I probably was acting as attorney for Kirshner  
10 Entertainment watching over their interest in seeing where  
11 the stock was.

12 Q You said probably.

13 A Yes, sir, I was.

14 THE COURT: We have had enough of this.

15 THE WITNESS: I was, sir. I am not Mr. Moelis'  
16 lawyer. Mr. Moelis is executive vice president. You act  
17 through individuals. Now when I represent Kirshner Enter-  
18 tainment Corporation, I am acting for Mr. Moelis, executive  
19 vice president; Mr. Kirshner, president.

20 Q I believe you said that the Kirshner Corporation  
21 was interested in seeing that the stock didn't fall in the  
22 hands of anybody that was unsatisfactory?

23 A Absolutely. It was Mr. Kirshner's feelings and  
24 Mr. Moelis' feelings.  
25

\* \* \*

1  
2 Q Now, in connection with the acquisition of the  
3 Hollender stock, you acquired it in your name, did you not?

4 A Yes, I did.

5 Q You gave Mr. Hollender a check?

6 A My check, yes.

7 Q Your own check?

8 A My check or my firm's check.

9 Q Did you receive a check from anybody for the  
10 stock?

11 A Yes. From Irving Moskowitz, who is the attorney  
12 for Harry Saltzman.

13 Q Did you, at the time, or before the time, advise  
14 Mr. Hollender that his stock was being purchased by you as  
15 nominee for Irving Moskowitz who was acting as nominee for  
16 Harry Saltzman?

17 A No, sir. I told him--

18 THE COURT: That's the answer. The answer is  
19 no.

20 Q What is the answer?

21 A No.

\* \* \*



eb:mg

Cohen-cross

347

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Q Were you advised before January 29th, 1969, that if Mr. Hollender learned or was informed that Mr. Saltzman was to be the purchaser of his stock, he would not sell?

A No, I don't think so. I think Mr. Moskowitz told me that he would rather not disclose to Mr. Hollender that Mr. Saltzman would be the ultimate purchaser.

eb:mg

Cohen-cross

348

1  
2 I don't recall Mr. Moskowitz saying to me that  
3 if I disclosed that information, he wouldn't sell. I'm  
4 not so sure that he ever said that to me.

5 Q I am not talking about what Mr. Moskowitz said.

6 I'm talking about whether you received that infor-  
7 mation or you made that statement in the course of a confer-  
8 ence between you, Mr. Moelis, Saltzman and Moskowitz?

9 A I didn't make that statement. Someone else may  
10 have made it but I didn't make it.

11 Q Did Mr. Saltzman make that statement in your  
12 presence?

13 A Possibly. I don't recall, sir. Could very well  
14 have.

15 THE COURT: You don't recall?

16 THE WITNESS: I don't recall it, no.

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18 \* \* \*  
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EXCERPTS FROM STOCKHOLDERS AGREEMENT  
DATED JUNE 26, 1967

\* \* \*

"2. Restriction on Stock. Each Stockholder shall not encumber or dispose of any of the shares of stock of the Corporation which may now or hereafter be held or owned by him until he shall have first received a bona fide offer from a third party to buy such stock. In that event, if such Stockholder desires to accept any such offer of a third party, such Stockholder shall first offer for sale all of his shares of stock to the Corporation, or if the Corporation shall not purchase the same, then to the other Stockholders in his Group, upon the same terms and conditions as made by such third party, but if at such time the offeror is the only remaining Stockholder of his Group, or if the remaining members in his Group decline such offer, in whole or in part, then all his shares of stock subject to such offer shall be offered for sale to the Stockholders of the other Group pro rata based on their shareholdings within such Group. Every such offer shall be made by notice given in the manner provided in Paragraph 12 and shall be deemed made when such notice is deemed given, and shall state that the offeror offers to sell all the shares of stock of the Corporation held or owned by him. The offeror shall give notice of every such offer to each party to this Agreement who is then a Stockholder of the Corporation and to the Corporation.

\* \* \*

9. Limitation on Certain Corporation Action. Unless five of the seven members of the Board of Directors shall approve the same, there shall be no merger, combination, consolidation or recapitalization of the stock of the Corporation, sale of all or substantially all of the assets of the Corporation, issuance of stock or stock options, or the taking of any other action with respect to the capital stock of the Corporation which action would diminish any Stockholder's proportionate interest in the total outstanding stock of the Corporation.

10. Endorsement on Stock Certificate. All shares of stock of the Corporation issued and delivered to the Stockholders shall have endorsed thereon the following statement:

'The shares of stock represented by this certificate are subject to the terms of an agreement dated June 26, 1967, between the Corporation and its Stockholders, a copy of which is on file in the office of the Corporation.' "

\* \* \*

Letter From Herbert Moelis to Cohen & Grossberg, Attention  
Irving Cohen, Esq., Dated December 9, 1968.

ISA 338-475  
ED. 4-23-71)

EXHIBIT 8  
U. S. DIST. COURT  
S. D. OF N. Y.  
in evid.  
CR 8

INNER ENTERTAINMENT CORPORATION  
1500 AVENUE / NEW YORK, N. Y. 10021 / Tel: (212) 832-8200

OF THE VICE-PRESIDENT  
ELIS

December 9, 1968

FPI MI-4-8-74-30M-2001

300 PARK AVE.  
N.Y. N.Y.  
att: Irving Cohen, Esq.

re: Barnett - Cohen	8000.00	\$ 24,000.00
Rochlis - Kirshner	6000.00	24,000.00
Gordon - Moelis	6000.00	24,000.00

Dear Irv:

In connection with the transfer of the above stock and loans, I am enclosing Xerox copies of the following documents:

1. amendment dated Feb. 7, 1968 to the purchase agreement P.A. and the stock agreement S.A.
2. agreement dated Nov. 8, 1967
3. agreement dated March 13, 1968 between the Corporation and Al Hollender.

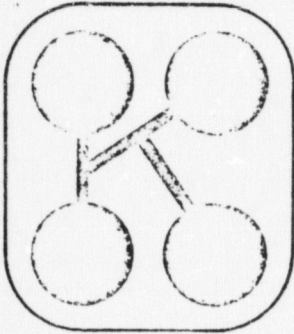
The transactions I believe should operate as follows:

1. Kirshner will pay Rochlis \$6,000 for Rochlis's capital stock and assume any future obligations that Rochlis may now have in respect of future loans to the Corporation.
2. Moelis will pay Gordon \$6,000 for Gordon's capital stock and assume any future obligations that Gordon may now have in respect of future loans to the Corporation.
3. Kirshner will lend to the Corporation the total sum of \$48,000 which will represent the \$24,000 lent by Rochlis and the \$24,000 lent by Gordon. The Corporation will thereupon pay out to Rochlis and Gordon respectively, their \$24,000 in loans together with any interest due thereon from Oct. 1, 1968 through the date of Closing.

Rep 4 59  
Lid  
JP  
6/11/74



Letter From Herbert Moelis.



KIRSHNER ENTERTAINMENT CORPORATION  
655 MADISON AVENUE / NEW YORK, N. Y. 10021 / Tel: (212) 832-8200

OFFICE OF THE VICE-PRESIDENT  
HERB MOELIS

Mr. Cohen, p. 2

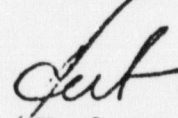
4. I assume you will follow the same procedure in respect of acquisition of stock from Barnett, although obviously there are tax considerations that you may wish to work out with Barnett.

At the present time I am presented with two problems:

A. Len Gordon is leaving for Japan this Wednesday, Dec. 11. Therefore, I think it advisable that we close his deal at once.

B. Rochlis has indicated to me that he wasn't sure that he wanted to be taken out and would like to stay in. As far as Donnie and I are concerned, he's out. Herb Siegel told us quite clearly last week that Rochlis wanted to be taken out and we told Herbie quite clearly that we would take Jim out. I have told this to Jim on the phone. I would appreciate speaking to you tomorrow at your earliest convenience.

Sincerely,

  
Herb Moelis

HM:gp  
encs.

Memorandum From David Grossberg to Herbert Moelis  
Dated December 12, 1968.

Ex. 9 in evidence

P's of 52  
6/11/74

Herb Moelis

December 12, 1968

David Grossberg

Gordon transfers

Please find enclosed a receipt, letter dated December 10, 1968, undated letter and stock powers. These should be signed by S. Leonard Gordon, except that the letter of December 10th has to be signed not only by Gordon, but by all of the other stockholders listed in paragraph "1" and yourself.

I believe you will find these in order, since they follow very closely the papers used in the prior transfer. In the December 10th letter I refer to Subchapter S for the other corporations and assume that they are also Subchapter S corporations.

The letter of December 10th will have to be duplicated so that all of the other parties can sign. I assure that you will take care of the obtaining of signatures from the other stockholders, but if you prefer that we do it, please return the letters and we will send them out to the individual parties for signature.

13/cm  
Enc.



Form Letter of David Grossberg Dated December 23, 1968  
Bearing Separate Notation of Names and Addresses  
of Stockholders to Whom Letters Were Mailed.

20411

James J. Rochlis - 150 E. 69 NYC 10021  
David F. Linowes - 9 W. W. Lane, Scarsdale 10583  
Cy Feuer - 505 Park  
Alfred L. Hollender - 911 Park  
Richard Ornsteen - 718 Merion Square, Gladwynne, Pa  
Herbert J. Siegel - ~~100 Madison~~ 600 Madison 10022  
Benjamin Sonnenberg - 19 Gramercy Park, 10003

By 50430  
12/22/70  
CS

(Date: Dec. 23, 1968)

USA 33a-475 (ED. 4-23-71)	PLAINTIFFS'
	EXHIBIT 204
	U. S. DIST. COURT
	S. D. OF N. Y. for the City of New York Identification

*Handwritten:* 12/22/70 CS

FPI:MI-4-8-74-30M-2001

C. Leonard Gordon and Lawrence R. Barnett are selling out their interests in Kirshner Entertainment Corporation, Don Kirshner Music, Inc. and KEC Music, Inc. Mr. Gordon's interest is being sold to Herb Moelis and Mr. Barnett's interest is being sold to Don Kirshner and Irving Cohen.

In order to effectuate this transfer, consent of the other stockholders is required, and we are therefore enclosing copies of letters of consent.

We would appreciate your signing in the space indicated by your pencilled initials, and returning these to us in the self-addressed envelope enclosed for your convenience.

Very truly yours,

David Grossberg

DO/ew  
Encs.

Letter From C. Leonard Gordon to Kirshner Entertainment Corporation Dated December 30, 1968.

Gordon A.  
FOID  
8/4/80  
EG

Ex. 10

December 30, 1968

Kirshner Intertainment Corporation  
655 Madison Avenue  
New York, New York

Gentlemen:

I am the owner of 7% Promissory Notes totalling \$24,000 principal aggregate amount issued by Kirshner Intertainment Corporation. The corporation desires to satisfy said notes and I desire that said notes be satisfied by payment of the principal amount thereof, together with interest to the date hereof in the amount of \$418.80.

In that connection I am unable to locate the following two notes which are part of said \$24,000 principal amount:

Note dated May 1, 1968 in the principal amount of \$3,000

Note dated July 1, 1968 in the principal amount of \$3,000

I do hereby affirm that I have made a diligent search for said notes, but have been unable to find them. I agree to hold Kirshner Intertainment Corporation harmless from and against any and all claims or loss which may result from my failure to deliver said two notes.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS 24th DAY OF DECEMBER, 1968.

\_\_\_\_\_  
C. Leonard Gordon

Sworn to before me this  
24th day of December, 1968



120a  
Undated Letter From C. Leonard Gordon to  
Herbert Moelis.

EX, 11

Mr. Herbert Moelis  
655 Madison Avenue  
New York, N. Y. 10021

DEPT Gordon  
8/7/70 ID

Dear Mr. Moelis:

I confirm herewith that I have this day sold the following securities to you:

6,000 shares of capital stock of Kirshner  
Entertainment Corporation;

60 shares of capital stock of KEC Music, Inc.;

60 shares of capital stock of Don Kirshner Music, Inc.

I confirm further that notes evidencing loans from me to Kirshner Entertainment Corporation, in the amount of \$24,000 have been satisfied and all principal and interest has been paid to me. I acknowledge receipt of your check in the amount of \$6,000 which is accepted subject to collection. You will agree to pay New York stock transfer taxes applicable to this transfer of shares.

You acknowledge receipt of the stock certificates representing the above mentioned securities, accompanied by instruments sufficient to transfer them to you.

Very truly yours,

C. Leonard Gordon

AS PURCHASER I CONFIRM  
THE SALE ABOVE

Herbert Moelis

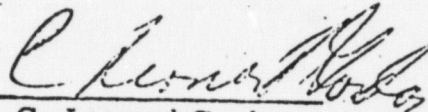
121a

Receipt Dated December 30, 1968 Signed by  
C. Leonard Gordon.

Ex. 13

December 30, 1968

C. Leonard Gordon hereby acknowledges receipt  
of \$24,000.00 with accrued interest, (\$418.80), paid to  
him in full satisfaction of a series of promissory notes  
issued by Kirshner Entertainment Corporation (formerly known  
as Kirshner Productions, Inc.) identified as follows:

  
C. Leonard Gordon



Letter From Herbert Moelis to Kirshner Entertainment Corporation  
et al., Dated December , 1968 Bearing the Signature of  
C. Leonard Gordon.

SLG  
Ex 17

New York, New York  
December , 1968

To: Kirshner Entertainment Corporation,  
a New York corporation, formerly  
named Kirshner Productions, Inc.  
("Entertainment"), Don Kirshner Music,  
Inc., a New York corporation ("DKMI"),  
KEC Music, Inc., a New York corporation  
("KEC"), and each individual who is a  
party to any of the Agreements ( the  
"Agreements") identified in Paragraph  
"1" below:

Dear Sirs:

I hereby confirm my understanding with you as follows:

1. I represent and warrant that I have been provided with  
copies of and I have read the following Agreements:

a. Purchase Agreement dated June 26, 1967 between  
Entertainment and the Purchasers party thereto;

b. (Untitled) Stockholders' Agreement dated June  
26, 1967 between 9 individuals and Entertainment.

c. Amendment dated February 7, 1968 to the Purchase  
Agreement and the Stockholders' Agreement;

d. (Untitled) Agreement dated June 26, 1967 between  
8 individuals.

e. (Untitled) Stockholders' Agreement dated as of  
November 8, 1967 between 10 individuals and DKMI.

f. (Untitled) Agreements dated September 18, 1967  
between 10 individuals and Entertainment relating to  
additional investors.

g. Agreement dated April 23, 1968 between 10 stock-  
holders and KEC.

The parties to these Agreements include some or all of Entertainment,  
DKMI, KEC and the following individuals: Don Kirshner, James J.  
Rochlis, C. Leonard Gordon, Lawrence R. Barnett, David F. Linowes,  
Cy Feuer, Alfred L. Hollender, Richard Ornsteen, Herbert J. Siegel  
and Benjamin Sonnenberg.

Letter Dated December , 1968.

2. To induce you to permit me to purchase all of the common stock of Entertainment, DKMI and of KEC owned by C. Leonard Gordon and to arrange to lend to Entertainment the sum of \$24,000 on the same terms and conditions as the said loan by Gordon, I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named therein at the time of their original execution. Effective from such date, each of you releases C. Leonard Gordon from any and all liability under the Agreements.

3. On such effective date, I shall execute and deliver to Entertainment a stockholder's consent to Entertainment's Subchapter S election and similarly with respect to DKMI and KEC.

4. Your consent to the transactions contemplated by this Agreement dated in December, 1968, (the "December 1968 Agreement") shall, in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph "2" of the Stockholders' Agreement identified in Paragraph "1 (b)" of this December 1968 Agreement.

5. If the transactions contemplated by this December 1968 Agreement are not consummated on or prior to March 1, 1969, this December 1968 Agreement shall be null and void.

If you are in agreement with the foregoing, please execute three counterparts of this December 1968 Agreement and return them to Cohen & Grossberg, Esqs., 505 Park Avenue, New York, N. Y. 10022. This December 1968 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by Entertainment, KEC, DKMI and each of the individuals named in Paragraph "1" hereof.

Very truly yours,

Herbert Moelis

ACCEPTED AND AGREED TO:

By

JFR



Letter From Lawrence R. Barnett Dated  
December 30, 1968.

USA 33a - 475  
(ED. 4-23-71)

EXHIBIT 31  
U. S. DIST. COURT  
S. D. OF N. Y.  
in Evidence

*[Handwritten signature]*

10022

FPI-MI-4-8-74-30M-2001

NEW YORK, N. Y. 10021

Dear Messrs. Cohen and Kirshner:

I confirm herewith that I have this day sold the following securities to you:

8,000 shares of capital stock of Kirshner Entertainment Corporation;

80 shares of capital stock of KEC Music, Inc.;

80 shares of capital stock of Don Kirshner Music, Inc.

I confirm further that notes evidencing loans from me to Kirshner Entertainment Corporation, in the amount of \$32,000 have been satisfied and all principal and interest has been paid to me. I acknowledge receipt of \$3,000 (checks subject to collection). You agree to pay New York stock transfer taxes applicable to this transfer of shares.

You acknowledge receipt of the stock certificates representing the above mentioned securities, accompanied by instruments sufficient to transfer them to you.

Very truly yours,

*[Handwritten signature of Lawrence R. Barnett]*  
Lawrence R. Barnett

AS PURCHASER WE CONFIRM  
THE SALE ABOVE

*[Handwritten signature of Irving Cohen]*  
Irving Cohen

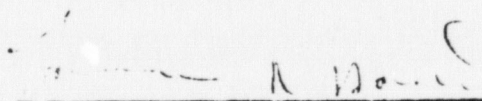
*[Handwritten signature of Don Kirshner]*  
Don Kirshner

125a

Receipt dated December 30, 1968 Signed by Lawrence R. Barnett.

December 30, 1968

Lawrence R. Barnett hereby acknowledges receipt  
of \$32,000.00, with accrued interest <sup>(10% \$3840)</sup>, paid to him in full  
satisfaction of a series of promissory notes issued by  
Miramax Entertainment Corporation (formerly known as  
Miramax Productions, Inc.) identified as follows:

  
\_\_\_\_\_  
Lawrence R. Barnett



Letter From Irving Cohen to Kirshner Entertainment Corporation et al., Dated December , 1968 Bearing the Signature of Lawrence R. Barnett.

EX. 45

New York, New York  
December , 1968

To: Kirshner Entertainment Corporation, a New York corporation, formerly named Kirshner Productions, Inc. ("Entertainment"), Don Kirshner Music, Inc., a New York corporation ("DKM"), KEC Music, Inc., a New York corporation ("KEC"), and each individual who is a party to any of the Agreements (the "Agreements") identified in Paragraph "1" below:

Dear Sirs:

I hereby confirm my understanding with you as follows:

1. I represent and warrant that I have been provided with copies of and I have read the following Agreements:

a. Purchase Agreement dated June 26, 1967 between Entertainment and the Purchasers party thereto;

b. (Untitled) Stockholders' Agreement dated June 26, 1967 between 9 individuals and Entertainment;

c. Amendment dated February 7, 1968 to the Purchase Agreement and the Stockholders' Agreement;

d. (Untitled) Agreement dated June 26, 1967 between 8 individuals;

e. (Untitled) Stockholders' Agreement dated as of November 8, 1967 between 10 individuals and DKM;

f. (Untitled) Agreements dated September 13, 1967 between 10 individuals and Entertainment relating to additional investors;

g. Agreement dated April 23, 1968 between 10 stockholders and KEC.

The parties to these Agreements include some or all of Entertainment, DKM, KEC and the following individuals: Don Kirshner, James J. Rochlis, C. Leonard Gordon, Lawrence R. Barnett, David F. Linnow, Cy Feuer, Alfred L. Hollander, Richard Ornstein, Herbert J. Siegel and Benjamin Sonnenberg.

2. To induce you to permit me to purchase one-half (1/2) of all of the common stock of Entertainment, DKM and of KEC owned by Lawrence R. Barnett and to arrange to lend to Entertainment

## Letter From Cohen to Kirshner.

together with the purchaser of the other one-half (1/2) of said common stock, the sum of \$32,000, on the same terms and conditions as the said loan by Barnett, I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named a party thereto in place of Lawrence R. Barnett with respect to stock being purchased by me, and had been so named therein at the time of their original execution. Effective from such date, each of you releases Lawrence R. Barnett from any and all liability under the Agreements.

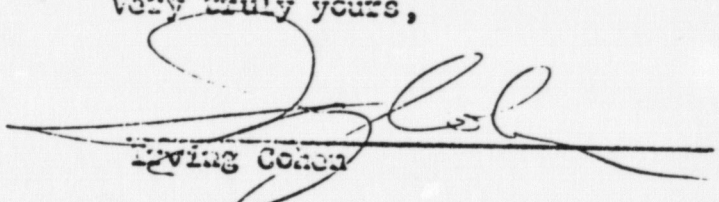
3. On such effective date, I shall execute and deliver to Entertainment a stockholder's consent to Entertainment's Subchapter S election and similarly with respect to DIRT and KMC.

4. Your consent to the transactions contemplated by this Agreement dated in December, 1968, (the "December 1968 Agreement") shall, in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph "2" of the Stockholders' Agreement identified in Paragraph "1 (b)" of this December 1968 Agreement.

5. If the transactions contemplated by this December 1968 Agreement are not consummated on or prior to March 1, 1969, this December 1968 Agreement shall be null and void.

If you are in agreement with the foregoing, please execute three counterparts of this December 1968 Agreement and return them to Cohen & Grossberg, 505 Park Avenue, New York, N. Y. 10022. This December 1968 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by Entertainment, KMC, DIRT and each of the individuals named in Paragraph "1" hereof.

Very truly yours,

  
Irving Cohen

ACCEPTED AND AGREED TO:

By  R. Barnett



Letter From Don Kirshner to Kirshner Entertainment Corporation  
et al, dated December , 1968 Bearing the Signature of  
James J. Rochlis.

2.4. 56

New York, New York  
December , 1968

To: Kirshner Entertainment Corporation,  
a New York corporation, formerly  
named Kirshner Productions, Inc.  
("Entertainment"), Don Kirshner Music,  
Inc., a New York corporation ("DKMI"),  
KEC Music, Inc., a New York corporation  
("KEC"), and each individual who is a  
party to any of the Agreements (the  
"Agreements") identified in Paragraph  
"1" below:

Dear Sirs:

I hereby confirm my understanding with you as follows:

1. I represent and warrant that I have been provided with  
copies of and I have read the following Agreements:

- a. Purchase Agreement dated June 26, 1967 between  
Entertainment and the Purchasers party thereto;
- b. (Untitled) Stockholders' Agreement dated June 26,  
1967 between 9 individuals and Entertainment;
- c. Amendment dated February 7, 1968 to the Purchase  
Agreement and the Stockholders' Agreement;
- d. (Untitled) Agreement dated June 26, 1967 between  
8 individuals;
- e. (Untitled) Stockholders' Agreement dated as of  
November 8, 1967 between 10 individuals and DKMI;
- f. (Untitled) Agreements dated September 18, 1967  
between 10 individuals and Entertainment relating to  
additional investors;
- g. Agreement dated April 23, 1968 between 10 stock-  
holders and KEC.

The parties to these Agreements include some or all of Entertain-  
ment, DKMI, KEC and the following individuals: Don Kirshner,  
James J. Rochlis, C. Leonard Gordon, Lawrence R. Barnett, David  
F. Linowes, Cy Feuer, Alfred L. Hollander, Richard Ornstein,  
Herbert J. Siegel and Benjamin Schenkerberg.

2. To induce you to permit me to purchase one-half (1/2)  
of all of the common stock of Entertainment, DKMI and of KEC  
owned by Lawrence R. Barnett and to arrange to lend to Entertainment

Letter Bearing the Signature of James J. Rochlis.

together with the purchaser of the other one-half (1/2) of said common stock, the sum of \$32,000, on the same terms and conditions as the said loan by Barnett, I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named a party thereto in place of Lawrence R. Barnett with respect to stock being purchased by me, and had been so named therein at the time of their original execution. Effective from such date, each of you releases Lawrence R. Barnett from any and all liability under the Agreements.

3. On such effective date, I shall execute and deliver to Entertainment a stockholder's consent to Entertainment's Subchapter S election and similarly with respect to DKM and KMC.

4. Your consent to the transactions contemplated by this Agreement dated in December, 1968, (the "December 1968 Agreement") shall, in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph "2" of the Stockholders' Agreement identified in Paragraph "1 (b)" of this December 1968 Agreement.

5. If the transactions contemplated by this December 1968 Agreement are not consummated on or prior to March 1, 1969, this December 1968 Agreement shall be null and void.

If you are in agreement with the foregoing, please execute three counterparts of this December 1968 Agreement and return them to Cohen & Grossberg, 505 Park Avenue, New York, N. Y. 10022. This December 1968 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by Entertainment, KMC, DKM and each of the individuals named in Paragraph "1" hereof.

Very truly yours,

Don Kirchner

ACCEPTED AND AGREED TO:

By 



130a

Letter From Alfred L. Hollender to Kirshner Entertainment  
dated January 10, 1969.

USA 23a - 475  
(ED. 4-23-71)

EXHIBIT 53

U. S. DIST. COURT  
S. D. OF N. Y.

*in evid.*

*BJ ch*

*Deft's Ex L for  
12/22/70  
CS*

January 10, 1969

FPI-MI-4-8-74-30M-2001

Kirshner Entertainment  
655 Madison Avenue  
New York, N. Y.

Gentlemen:

In accordance with your recent offer to repurchase  
my stock interest in Kirshner Entertainment, this  
is to advise you that I have elected to accept.

Will you please make arrangements for my withdrawal  
as a stockholder as soon as it is expedient.

Sincerely yours,

cc: Mr. Irving Cohen

131a

Letter From Irving Cohen to Alfred L. Hollender dated  
January 27, 1969.

COHEN & GROSSBERG  
ATTORNEYS AT LAW

IRVING COHEN  
DAVID GROSSBERG  
RUTH B. YOUNG  
BENJAMIN ZINKIN

Ex. 5-4

505 PARK AVENUE  
NEW YORK, N. Y. 10022  
MURRAY HILL 8-6940  
CABLE ADDRESS "COHENLAW"

*Deft. Ex. 11 for ad  
12/22/70  
CS*

January 27, 1969

Mr. Alfred L. Hollender  
Chris Craft Industries, Inc.  
600 Madison Avenue  
New York, N. Y. 10022

Dear Al:

My partner and I have tried to reach you by phone several times today in order to complete the transaction of the repurchase of your stock in Kirshner Entertainment Corporation, KEC Music, Inc. and Don Kirshner Music, Inc.

I have the check ready for you, together with the papers ready for your signature, and would appreciate receiving your stock certificates, endorsed in blank by you.

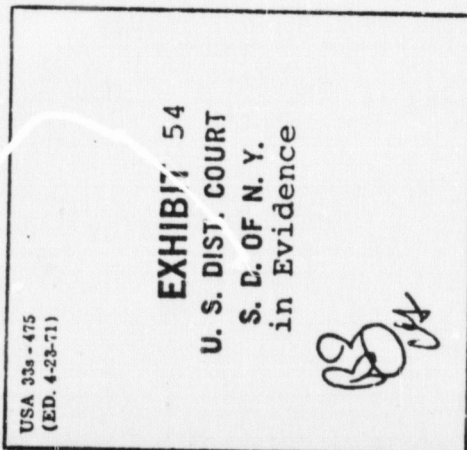
I am leaving for the Coast at the end of the day tomorrow, and I am anxious to close either at the end of the day today, or tomorrow morning.

Since 217.

*Irving*  
Irving Cohen

IC/cw

< By Hand



FPI-MI-4-8-74-33M-2001



Letter From Alfred L. Hollender to Irving Cohen dated  
January 29, 1969 Signed by Alfred L. Hollender and  
Countersigned by Benjamin Zinkin on Behalf of Irving  
Cohen.

January 29, 1969

Irving Cohen, Esq.  
505 Park Avenue  
New York, N. Y. 10022

Dear Mr. Cohen:

I confirm herewith that I have this day sold the following securities to you:

8,000 shares of capital stock of Kirshner  
Entertainment Corporation;

80 shares of capital stock of KEC Music, Inc.;

80 shares of capital stock of Don Kirshner Music, Inc.

I confirm further that notes evidencing loans from me  
to Kirshner Entertainment Corporation in the amount of \$32,000.00  
have been satisfied and all principal and interest has been paid  
to me. I acknowledge receipt of your check in the amount of  
\$8,000.00 which is accepted subject to collection. I agree to  
pay New York stock transfer taxes applicable to this transfer  
of shares. *62.00*

You acknowledge receipt of the stock certificates  
representing the above-mentioned securities, accompanied by  
instruments sufficient to transfer them to you.

Very truly yours,

*Alfred L. Hollender*  
Alfred L. Hollender

AS PURCHASER I CONFIRM  
THE SALE ABOVE

*Irving Cohen*  
Irving Cohen *Benjamin Zinkin*

USA 33a - 475  
(ED. 4-23-71)

EXHIBIT 58  
U. S. DIST. COURT  
S. D. OF N. Y.  
in Evidence

*Marked by*  
*Δ 15*

Receipt dated January 29, 1969 Signed by Alfred L. Hollender.

Ex. 576

January 29, 1969

Alfred L. Hollender hereby acknowledges receipt of Thirty-two Thousand (\$32,000.00) Dollars with accrued interest (171.84) paid to him in full satisfaction of a series of promissory notes issued by Kirshner Entertainment Corporation, (formerly known as Kirshner Productions, Inc.) as follows:

\$4,000 Note	(June 3, 1968)
4,000 Note	(July 1, 1968)
8,000 Note	(June 29, 1967)
8,000 Note	(December 6, 1967)
4,000 Note	(May 1, 1968)
4,000 Note	(March 1, 1968)

Alfred L. Hollender  
Alfred L. Hollender



Letter From Irving Cohen to Kirshner Entertainment Corporation  
et al., dated January 29, 1969 Signed by Irving Cohen  
and Alfred L. Hollender.

USA 35a - 475  
(ED. 4-23-71)

**EXHIBIT 67**  
U. S. DIST. COURT  
S. D. OF N. Y.

in Evidence

*[Handwritten signature]*

FPI-MI-4-8-74-30M-2001

party to any of the Agreements (the  
"Agreements") identified in Paragraph  
"1" below:

New York, New York  
January 27, 1969

*Refo Ex 47*  
*6/11/74*

Dear Sirs:

I hereby confirm my understanding with you as follows:

1. I represent and warrant that I have been provided  
with copies of and I have read the following Agreements:

- a. Purchase Agreement dated June 26, 1967 between  
Entertainment and the Purchasers party thereto;
- b. (Untitled) Stockholders' Agreement dated June  
26, 1967, between nine (9) individuals and Entertainment;
- c. Amendment dated February 7, 1968, to the Pur-  
chase Agreement and the Stockholders' Agreement;
- d. (untitled) Agreement dated June 26, 1967,  
between eight (8) individuals;
- e. (Untitled) Stockholders' Agreement dated as of  
November 8, 1967 between ten (10) individuals and DKMI;
- f. (Untitled) Agreements dated September 18, 1967  
between ten (10) individuals and Entertainment relating  
to additional investors;
- g. Agreement dated April 23, 1968 between ten (10)  
stockholders and KEC.

The parties to these Agreements include some or all of Entertainment,  
DKMI, KEC and the following individuals who are either original  
signatories or successors: Don Kirshner, David F. Linowes, Cy  
Tutor, Alfred L. Hollender, Richard Ornstein, Herbert J. Siegel, James J.  
Benjamin Sonnenberg, Herbert Moelis and Irving Cohen.

Rochlis

Letter Dated January 29, 1969.

2. To induce you to permit me to purchase all of the common stock of Entertainment, DKMI and of KEC owned by Alfred L. Hollender, and to arrange to lend to Entertainment the sum of \$32,000.00 on the same terms and conditions as the said loan by Hollender, I hereby agree, effective from the date on which such purchase shall be completed, to become and be bound by each of the Agreements as if I had been named a party thereto in place of Alfred L. Hollender with respect to stock being purchased by me, and had been so named therein at the time of their execution. Effective from such date, each of you releases Alfred L. Hollender from any and all liability under the Agreements. It is understood that I am purchasing these shares and lending this money in my own name, but that I may assign this interest to others, and in such event the approval herewith given with respect to my purchase and loan shall apply to my assignees upon their acceptance of this document and the provisions hereof.


3. On such effective date, I shall execute and deliver to Entertainment a stockholders' consent to Entertainment's Subchapter S election and similarly with respect to DKMI and KEC.

4. Your consent to the transactions contemplated by this Agreement dated in January, 1969, (the "January 1969 Agreement") shall, in relation to such transactions, constitute a waiver of the rights granted to you pursuant to Paragraph "2" of the Stockholders' Agreement identified in Paragraph "1 (b)" of this January 1969 Agreement.

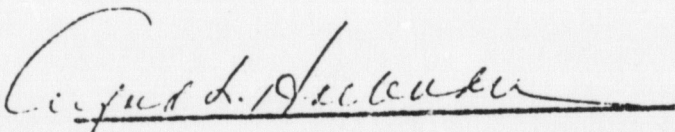
5. If the transactions contemplated by this January, 1969 Agreement are not consummated on or prior to March 1, 1969, this January, 1969 Agreement shall be null and void.

If you are in agreement with the foregoing, please execute three counterparts of this January, 1969 Agreement and return them to Cohen & Grossberg, 505 Park Avenue, New York, N. Y. 10022. This January, 1969 Agreement shall become effective upon the receipt by Cohen & Grossberg of counterparts of this Agreement duly executed by Entertainment, KEC, DKMI and each of the individuals named in Paragraph "1" hereof.

Very truly yours,

  
Irving Cohen

ACCEPTED AND AGREED TO:





136a

Form Letter of David Grossberg dated February 19, 1969 Bearing  
Separate Notation of Names and Addresses of Stockholders  
to Whom Letters Were Mailed.

USA 33a - 475  
(ED. 4-23-71)

PLAINTIFFS'  
EXHIBIT 208A  
U. S. DIST. COURT  
S. D. OF N. Y.  
for  
Identification

*By [Signature]*

FPI-MI-4-8-74-30M-2001

To: James J. Rochlis ✓  
David F. Linowes ✓  
Cy Feuer ✓  
Richard Ornstein ✓  
Herbert J. Siegel ✓  
Benjamin Sonnenberg ✓  
Irving Cohen ✓  
Donald Kirshner ✓  
Herbert Moelis ✓

*Ref 4 46-A  
L.L.D.)  
6/11/74*

February 19, 1969

Dear Sir:

Alfred L. Hollander is selling out his interest in  
Kirshner Entertainment Corporation, aka Kirshner Music, Inc.  
and KEC Music, Inc. His interest is being purchased in the  
name of Irving Cohen for further assignment by Mr. Cohen.

We enclose a copy of a letter of consent to this  
transfer, which we would appreciate your signing in the space  
indicated by your pencilled initials, and returning the same  
to us in the self-addressed envelope enclosed for your conven-  
ience.

Very truly yours,

David Grossberg

USA 33a - 475  
(ED. 4-23-71)

PLAINTIFFS'  
EXHIBIT 208  
U. S. DIST. COURT  
S. D. OF N. Y.

*By [Signature]*

FPI-MI-4-8-74-30M-2001

137a

Letter From C. Leonard Gordon to Irving Cohen dated March 20, 1969.

USA 33s - 475  
(ED. 4-23-71)

**EXHIBIT 25**  
**U. S. DIST. COURT**  
**S. D. OF N. Y.**  
in Evidence

March 20, 1969

Irving Cohen, Esq.  
505 Park Avenue  
New York, New York

Dear Irving:

I was deeply disturbed to learn about the deal between Kirshner Entertainment and Alan J. Lerner. I feel I should have been informed about the prospect of that deal before I sold.

As you know, I was one of the principal participants in putting Kirshner together in the first place, and when they were looking for a lawyer, I suggested and recommended you.

I would have not sold if I had known all the facts.

Sincerely,

C. Leonard Gordon

CLG:jdb

Gordon C-2  
8/4/70



138a

Letter From Irving Cohen to C. Leonard Gordon dated March 26, 1969.

SA 33a - 475  
ED. 4-22-71)

EXHIBIT 29  
U. S. DIST. COURT  
S. D. OF N. Y.  
in Evidence

*[Handwritten signature]*

FPI-MI-4-8-74-30M-2001

COHEN & GROSSBERG  
ATTORNEYS AT LAW

505 PARK AVENUE  
NEW YORK, N.Y. 10022  
MURRAY HILL 8-6940  
CABLE ADDRESS "COHENLAWS"

March 26, 1969

C. Leonard Gordon, Esq.  
600 Madison Avenue  
New York, New York

Dear Leonard:

Your letter of March 20, 1969 is an outrage. You have acted foolishly and tastelessly. You make a false assumption and then rely on it to attack me. Surely, you have better sense than to believe your ill-conceived fantasy.

You know the truth about the sale of Alan Lerner's stock. You have already heard it once. I told you that Lerner's stock was under contract for sale to another Company, at the time you sold your stock in Kirshner Entertainment. You know better than any one else, why you sold your stock. You did so at your own request, to meet a pressing, huge financial commitment and to free yourself of any further loans to Kirshner Entertainment Corporation.

I also told you, that not until February 1969, did any one have any thought of any "prospect" of a deal between Alan Lerner and Kirshner Entertainment Corporation.

Surely you realize that your letter is imprudent and defamatory. I do appreciate your thoughtfulness in the past and the relationship between us. Perhaps some day it can be restored.

Sincerely,

*[Handwritten signature of Irving Cohen]*  
Irving Cohen

IC:ew

*[Handwritten signature: Gordon F-2]*  
8/4/70

Seven Page Document Captioned "MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF KIRSHNER ENTERTAINMENT CORPORATION" Dated April 4, 1969 and Signed Irving Cohen Secretary.

MINUTES OF A SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF  
KIRSHNER ENTERTAINMENT CORPORATION

A Special Meeting of the Board of Directors of KIRSHNER ENTERTAINMENT CORPORATION was held at the office of the Corporation, 655 Madison Avenue, New York, New York, on April 4, 1969, at 10:00 A.M.

The following were present:

DON KIRSHNER  
HERBERT MOELIS  
OLIVER HERTTUA  
JEROME STEIN

being all of the Directors of the Corporation.

DON KIRSHNER, President of the Corporation, acted as Chairman of the Meeting.

A Waiver of Notice of the Meeting, signed by all of the Directors of the Corporation, was read to the Meeting and ordered prefixed to the Minutes of the Meeting.

The President advised the Meeting that there were vacancies in the office of Secretary and Assistant Secretary, and thereupon IRVING COHEN was nominated for the office of Secretary and DAVID GROSSBERG was nominated for the office of Assistant Secretary, and they were unanimously elected to such offices. IRVING COHEN, who was present, was designated by the President to act as Secretary of the Meeting, as well.

The Chairman advised the Meeting that there had been several changes in the stockholders of the Corporation since



## Seven Page Document.

the last meeting held on April 23, 1968. LAWRENCE I. BARNETT, C. LEONARD GORDON and ALFRED L. HOLLENDER had each sold his interest, and the new stockholders were IRVING COHEN, HERBERT MOELIS and IRVING MOSKOVITZ. There was presented to the Meeting copies of the agreements with the foregoing concerning the sale of the interests of the former stockholders, and after discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the acts of the officers of the Corporation in executing agreements relating to the sale of stocks of the Corporation by Messrs. BARNETT, GORDON and HOLLENDER, and the purchase of the said interests by Messrs. COHEN, MOELIS and MOSKOVITZ, by and the same are hereby ratified, confirmed and approved.

The Chairman noted that LAWRENCE I. BARNETT had formerly been a Director, but had resigned on December 30, 1968, and that this office had not been filled.

The Chairman then advised the Meeting that on March 13, 1969, the Corporation had purchased from ALAN JAY LERNER PRODUCTIONS, INC., certain rights in "CAMELOT" and "ON A CLEAR DAY YOU CAN SEE A RIVER" for and in consideration of the sum of \$500,000 and that an agreement to that effect had been entered into on that date. A copy of the said agreement was presented to the Meeting and after discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the acts of the officers of the Corporation in executing the said agreement dated March 13, 1969, pursuant

Seven Page Document.

to which certain rights in "CAMELOT" and "ON A CLEAR DAY YOU CAN SEE FOREVER" were purchased from ALAN JAY LERNER PRODUCTIONS, INC., be and the same hereby are ratified, confirmed and approved; and it was further,

RESOLVED, that the proper officers of the Corporation be and they hereby are authorized to take any and all further steps that may be necessary to carry out the said agreement.

The Chairman advised the Meeting that on the same day, March 13, 1969, the Corporation had entered into an Agreement and Plan of Reorganization qualifying as a tax-free exchange for Federal income tax purposes under Section 368 of the Internal Revenue Code pursuant to which the common stock of the Corporation would be exchanged for the common stock of the corporations controlling certain interests in certain of ALAN JAY LERNER's dramatico-musical works. A copy of the said Agreement and Plan of Reorganization was furnished to the Directors and after discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the acts of the officers of the Corporation executing the Agreement and Plan of Reorganization dated March 13, 1969, be and the same hereby are ratified, confirmed and approved, and it was further,

RESOLVED, that the officers of this Corporation are hereby authorized to enter into a more formal Agreement and Plan of Reorganization and to take all necessary steps in order to effectuate the purposes of the said Agreement and Plan of Reorgani-



zation.

The Chairman advised the Meeting that it would be to the best interests of the Corporation in connection with prospective matters to be discussed during this Meeting, to amend the Certificate of Incorporation and that the stockholders of the Corporation have agreed to do so. Among the amendments to be made is a change in the capitalization of the Corporation to authorize two million (2,000,000) shares of stock of a par value of one (1 $\frac{1}{2}$ ) cent and to convert each existing outstanding share into five (5) shares of stock pursuant to such amendment. A copy of the proposed Certificate of Amendment to the Certificate of Incorporation was presented to the Meeting, and after discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that upon the filing of the Certificate of Amendment to the Certificate of Incorporation substantially in the form of the Certificate of Amendment, a copy of which shall be annexed to the Minutes of this Meeting, changing the capital structure of the Corporation, the officers of the Corporation be and they hereby are authorized to issue five (5) shares of stock for each single share of stock now owned by each shareholder, and it was further,

RESOLVED, that the proper officers of this Corporation be and they hereby are authorized to take all steps necessary to obtain the consents of the shareholders and to take all other steps necessary to effectuate the foregoing.

## Seven Page Document.

The Chairman advised the Meeting that it would be advisable for the Corporation to adopt a stock option plan for certain key employees and that fifty thousand (50,000) shares of the common stock of the Corporation with a one ( 1 $\frac{1}{4}$ ) cent par value should be reserved for this purpose, with ten thousand (10,000) of such shares available for purchase in each of the next five (5) years. If possible, this should be a qualified stock option plan and at a price of \$7.50 per share.

After discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that this Corporation adopt a stock option plan for key employees to be designated by the Board of Directors pursuant to which these key employees may purchase a total of fifty thousand (50,000) shares of the Corporation at a par value of one ( 1 $\frac{1}{4}$ ) cent but not more than ten thousand (10,000) shares per year for the next five (5) years. The Board of Directors is authorized and directed to cause counsel to prepare a plan on such terms as it deems best for the Corporation and to qualify under the Internal Revenue Code as a stock option plan. The price of shares of stock, upon exercise of option, shall be \$7.50 per share unless otherwise required, in order to qualify, in which case another price shall be substituted.

The Chairman advised the Meeting that the Corporation entered into an agreement with H. L. FEDERMAN & CO. INCORPORATED regarding a loan to the Corporation, sale of certain stock and securities and a letter of intent concerning a future public offering of stock of the Corporation. A copy of the said



Seven Page Document.

agreement and letter was submitted to the Meeting and after discussion, and upon motion duly made, seconded and unanimously carried it was

RESOLVED, that the acts of the officers of the Corporation in executing an agreement dated March 31, 1969 with A. D. FEDERMAN & CO. INCORPORATED, a copy of which is annexed to these Minutes, relating to loans, sales of stock, warrants and other related matters at a public offering, be and they are hereby ratified, confirmed and approved and the officers of the Corporation are hereby authorized to make the payments required in the said agreement of March 31, 1969, issue the stock and warrants therein described, and to take all necessary steps to carry out the said agreement and effectuate the purposes thereof, including but not limited to the filing of the proper documents with the SEC and other regulatory agencies in states where the securities are to be sold.

The Chairman then advised the Meeting that the Corporation was no longer a Subchapter S corporation since not all stockholders had filed an election for the current year. The Chairman advised the Meeting that the stockholders of DON LARGHER MUSIC INC. and KEC MUSIC INC. proposed to contribute the stock of those corporations to this Corporation.

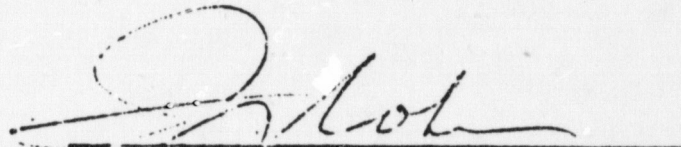
After discussion, and upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that this Corporation accept any contributions

## Seven Page Document.

of stock of DON KIRSHNER MUSIC, INC. and KEC MUSIC, INC., and upon acceptance of all of the stock of those corporations, the existing stockholders' agreements relating to DON KIRSHNER MUSIC, INC. and KEC MUSIC, INC. be and hereby are terminated and deemed null and void.

There being no further business, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

  
Secretary



Excerpts From Prospectus of Kirshner Entertainment Corporation.

\* \* \*

- [3] 6. A substantial portion of the proceeds from this public offering (approximately 73%) will be used by the Company to pay off loans owing to present stockholders and will, therefore, be unavailable for current and future operations of the Company (see "Introductory Statement—History", "Application of Proceeds" and "Recent Transactions—The Lending Group").

## Excerpts From Prospectus.

\* \* \*

**[4] History**

The Company was founded on June 12, 1967. Don Kirshner is its President and controlling stockholder. Mr. Kirshner may be deemed a Promoter of the Company as defined in the Rules and Regulations under the Securities Act of 1933, and being in a position to control the policies of the Company, may be considered a "parent" thereof. (See "Management" and "Principal Stockholders").

At or soon after organization, ten persons, including Mr. Kirshner, subscribed to an aggregate of 160,000 shares of Common Stock of the Company, then having a par value of \$.10 per share, at a price of \$1 per share. All of these shares were issued, and were thereafter exchanged on a five for one basis, as described hereafter in this section. The subscribing stockholders, other than Mr. Kirshner, also agreed to lend to the Company up to \$800,000 as needed by the Company, with interest at the rate of 7% per annum. \$320,000 was borrowed and remains unpaid. Until paid, there are certain restrictions on the Company regarding declaration of dividends, borrowing, issuance of additional stock, mandatory repayment under certain circumstances, etc. These notes are to be repaid from the proceeds of this public offering (see "Application of Proceeds"). These subscribing stockholders and their assignees have the right to have their stock registered under the Securities Act of 1933 under certain circumstances, at the Company's expense.

In the Spring of 1969, the Company entered into the transactions whereby it acquired certain Alan Jay Lerner properties (See "Business of the Company—The Alan Jay Lerner Properties" and "Recent Transactions—The Alan Jay Lerner Transactions"). In April, 1969, the Company entered into the transactions with the Lending Group whereby additional financing was obtained for the purpose of the Lerner acquisitions (See "Recent Transactions—The Lending Group").

In April, 1969, the Company amended its Certificate of Incorporation to provide for authorized Common Stock aggregating 2,000,000 shares, each of which has a par value of \$.01 per share. At that time, each share of Common Stock then outstanding or subscribed for was exchanged for five shares of the new Common Stock (par value \$.01).

\* \* \*



## Excerpts From Prospectus.

- [17] Irving Cohen, a stockholder of the Company, its Secretary and a member of the law firm of Cohen & Grossberg, counsel for the Company who have passed on legal matters for the Company with respect to this public offering, is an officer and director of the corporations involved in the Alan Jay Lerner transactions and a stockholder of one of them, was a party to the said Agreement and Plan of Reorganization dated as of May 20, 1969 and will receive in exchange for his stock in said corporation 5% of the total shares issued by the Company in the Alan Jay Lerner Transactions.

Service admitted  
July 7, 1975

Shaw, Fadenko & Kooten

By

Lewis Hassis  
a member of the firm  
Received - 7/17/75 - 2:45 p.m.  
Gordon Hume - Attorney  
Hume Scales





